In The

Supreme Court of the United States

October Term, 1975

JUL 5 1975
ROBERT SEAVER PODAK, JR., CLERK

No. 75-25

FEDERAL TRADE COMMISSION,

Respondent,

vs.

SAUL JAKEL,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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In The

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No.

FEDERAL TRADE COMMISSION,

Respondent,

v.

BEAUTY-STYLE MODERNIZERS, INC., a corporation and MORRIS JAKEL and SAUL JAKEL, individually and as officers of said corporation,

Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

OPINIONS BELOW

The initial decision of the Law Judge of the Federal Trade Commission dated August 31, 1973 appear in the appendix (at p.26a);* the final order of the Federal Trade Commission dated June 11, 1974 and appears in the appendix (55a), the judgment of the Court of Appeals for the Third Circuit was rendered on April 8, 1975 and was amended on April 22, 1975, appears in the appendix at 70a, 72a.

* Reference numbers suffixed by the letter "a" refer to Joint Appendix, filed simultaneously herewith.

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was entered April 8, 1975 and amended April 22, 1975. The jurisdiction of this Court is invoked by 28 U.S.C., Sec. 1254(1).

INTRODUCTORY PARAGRAPH

The petition of Saul Jakel, Morris Jakel, and Beauty-Style Modernizers, Inc., a New Jersey Corporation requests a writ of certiorari issue to review the judgment and opinion of the U.S. Court of Appeals for the Third Circuit, entered in this proceeding on April 8, 1975.

QUESTIONS PRESENTED

1. Is not the decision against the weight of the evidence?

2. Is not the final order harsh and excessive punishment?

STATEMENT OF THE CASE

Petitioner was charged with a violation of Regulation Z of the Truth in Lending Act 15 U.S.C. §1601,et seq.; in failing to disclose certain consumer credit information in connection with their advertising and home improvement contracts from July, 1969, through January 1970 and subsequent thereto.

Complaint was issued September 18, 1972. An Administrative hearing before the Law Judge was held in June, 1974 whose initial decision was rendered August 31, 1973 (26a). From this decision petitioners appealed to the Federal Trade Commission and a hearing was held in January, 1974 on which an order was entered June 11, 1974 by the Federal Trade Commission (55a). Petitioners appealed to the United States Court of Appeals for the Third Circuit, which on April 8, 1975 entered a judgment, as amended, on April 22, 1975, affirming the final order of the Federal Trade Commission (70a, 72a). From this judgment of the United States Court of Appeals for the Third Circuit, petitioners now petition the United States Supreme Court.

The case before the United States Court of Appeals, Third Circuit involved two broad questions:

> 1. Did the petitioners violate the Truth in Lending Act, (15 U.S.C. Sec. 1601, et seq.) and the Federal Trade Commission Act (15 U.S.C. Sec. 45(a)) in failing to disclose certain consumer credit information.
>
> 2. Whether the order of the Federal Trade Commission was too broad and not regulatory but punitive.

Petitioners, Beauty Style Modernizers, Inc., Morris Jakel and Saul Jakel, as individuals operated a home improvement

company at 432 Central Avenue, Newark, New Jersey. The individual petitioners are President and General Manager of the corporation. As part of their business, petitioners made credit transactions. On February 2, 1970, an agent of the Federal Trade Commission came to their place of business as a result of an advertisement on behalf of the petitioners in the Sunday News of December, 1969. At that time, the agent was informed that the ad had been corrected and upon reviewing the ad, the agent agreed that it was correct in its new form, and no violation existed (24a) (p.386a, line 5).

At the same time, while the agent was present, she took a copy of the contract being utilized by petitioners in their business, for review by her agency, and advised petitioners they would have to sign an affidavit assuring discontinuance of the objectionable advertising; although it is clear at that time the objectional advertising no longer existed (24a).

Thereafter, no further advertising appeared in the Daily News, but in the Sunday Star Ledger, a local New Jersey Newspaper, defective ad appeared on June 21, 1970 and July 5, 1970. The ad in the Sunday Star Ledger was not the same as the ad in the News, as set forth before, but was not in compliance. The facts show that the Sunday Star Ledger ad was prepared and placed by P & G Advertising Agency on behalf of the petitioners and went into the newspapers without petitioners knowledge.

Between February, 1970 and June, 1970, petitioners had advertised in the newspaper with the correct ad (23a).

As to the contracts, the agent for the Federal Trade Commission thereafter informed petitioners that the contracts were not in compliance with Regulation Z. A meeting was held before the institution of any complaint of the Federal Trade Commission at which time the Federal Trade Commission representatives requested petitioners to sign an affidavit to cease and desist from utilizing these contracts, which in fact, at that time, the violation had ceased both as to advertising and as to the contracts (Testimony partially stricken). Thereafter a complaint was issued on September 18, 1972 (16a-17a) (23a).

During the proceedings, a stipulation was entered into between the Federal Trade Commission and petitioners (14a-15a).

At the hearing before the Law Judge of the Federal Trade Commission the Law Judge first sustained the objection by petitioners to the entry of evidence prior to July 1, 1969, in accordance with the stipulation set forth in the appendix but thereafter, reversed himself (17a-20a).

The initial order of the Law Judge was adopted after a hearing before the Federal Trade Commission; although it is undisputed that at the time of the issuance of the order petitioners were no longer in violation and had been in compliance (66a) (23a).

However, the Federal Trade Commission adopted the initial order of the hearing officer.

This order is now presented to this Court for review.

It is only through a hearing in this Court that petitioners can obtain redress to avoid the punitive order which is in effect and not reasonably related to the violation alleged in the complaint and remains a lifetime sentence on petitioner in all of their future business activities.

This order makes the requirement that petitioner secure a signed receipt from persons engaged in the consummation of any extension of consumer credit or any aspect of preparation, creation or placing of advertising, from any future personnel. What right does petitioner have to insist upon such a signed statement; this is unenforcible.

Does the order intend to bind the future personnel of petitioner no matter *whomsoever* they may be. Petitioner envisions the following problem:

> (a) A freelance salesman brings in a customer for the purchase of home improvements having already sold the "job." Does he get a copy of the cease and desist order.
>
> (b) A telephone solicitor making inquiries as to sales which eventually culminate in a consumer credit transaction is involved, even though not employed directly by petitioner.
>
> (c) A banking officer involved in discounting the transaction thereby obviously engaged in extending credit on behalf of petitioner for whom repair job, but employed by others; does he get a copy of the order.

> (d) What about the person involved intermediately with the extension of credit, who seeks information from petitioner for direction to a financing agency, etc.

Petitioner is further ordered to notify the Commission of his discontinuance of business, together with a history of his new business or new employment detailed as to duty and responsibility. How is this regulatory? When does it stop? How does it serve the public welfare?

The order in its third paragraph is even worse:

> IT IS FURTHER ORDERED that respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

Is petitioner to be restricted from selling his business or interest in his business. Is petitioner to guess what corporate changes may effect compliance obligations. Even a jail sentence comes to an end. The maintenance of this order will effectively put petitioner out of business and not regulate, as the commission euphemistically states is the purpose of its order.

Not only is the order unenforcible, but it is punitive in that the good name of petitioner in a business which petitioner has been operating without any prior commission problems for many years.

Point I

The decision is against the weight of the evidence for the following reasons:

AS TO THE COMPLAINT

The complaint charges that:

> "By and through the use of the contract set forth in paragraph four respondents have:
>
> 1. Failed to obtain new contract forms or to alter their existing stock of contract forms prior to, during and subsequent to the period beginning July 1, 1969 and ending December 31, 1969, as required by Section 2266(k) of Regulation Z." (3a).

This is incorrect. Petitioners did obtain new contract forms and did alter existing contracts: (21a, 33a, 80a, 94a).

> "Prior to, during and subsequent to the period beginning July 1, 1969 and ending December 31, 1969."

The complaint was in error. Petitioner brings to the attention of the Court, that he never stated that no steps were taken before July 1, 1969, but rather stated:

> "Q. First, as to what we are talking about now, sir, when, if you recall, did you order the

> contracts which bear the inscription January, 1970? A. I honestly don't remember, but knowing the usual length of time that my printer takes I would presume I probably gave him the order approximately three months earlier" (38a).

Petitioner was telling the truth that he didn't honestly remember and was guessing at this time. A lapse of time from the trial of the case in 1973, more than 4 years from the events involved were the cause of this lapse, but petitioner does state he did take steps and now we know that his memory faulted him (75a).

Petitioner further brings to the attention of the Court, due to the lapse of time by the Commission in bringing this action from the initial charges until the hearing date; many of the records concerning this incident were unavailable as petitioner's memory was clouded by the lapse of time.

Below, however, for the Court's information and attention only, is a replica of a check and receipt from the printer indicating that in fact, petitioner did take such steps prior to July 1, 1969 to obtain new contracts (75a, 76a). The purpose of this information for the Court is to indicate that petitioner did not have a propensity in any manner whatsoever to violate the Federal Trade Commission Regulation as the Law Judge seemed to indicate in his initial decision and order. But in fact, petitioner had been harmed by the lapse of time brought on by the Commission's dilatory tatics.

As for the period July 1, 1969, to December 31, 1969, the "transition period," the Federal Trade Commission was

presented with numerous copies of altered existing stock contracts that were used by petitioners during those six months (80a) As for the period subsequent to December 31, 1969, it is difficult to understand how the Federal Trade Commission can make the statement that respondents: "failed to obtain new contract forms," since they have in their possession many of those new forms and indeed the complaints that follow in sections 2, 3, 4 and 5 of this paragraph five are all levelled against those new contracts (94a). Obviously this entire part one of paragraph five is an invalid complaint and contradicted by the evidence. (22a, 32a, 33a).

The complaint further states:

> "2. Failed to use the term 'cash down payment' to disclose and describe the amount of the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z." (3a).

Petitioner used the term "cash herewith" in place of the required term "cash down payment." Thus the complaint boils down to the use of a single word, "herewith" substituted for "down payment." Since the Federal Trade Commission had not presented any witnesses who have complained about this one word as being injurious to them, and since the word obviously does not change the meaning of the terms in any serious way, it is apparently a harmless error. Respondents have long since changed their contract to comply with the regulations required wording (94a).

The complaint further states:

> "3. Failed to use the term 'unpaid balance of cash price' to disclose and describe the difference between the cash price and the cash down payment, trade-in or total down payment, as required by Section 226.8(c)(3) of Regulation Z." (3a).

This is not correct. Petitioners condensed the term "unpaid balance of cash price" into the two-word term "cash balance" which means exactly the same thing, and in no way altered the meaning or terms of the contract (94a).

Since the Federal Trade Commission has not had any consumer complaints, we can assume that this harmless condensation of a five word phrase into a two word phrase in no way denied the customer of the information he had to have.

Petitioners have long since printed new contract forms using the exact language set forth in Regulation Z.

The complaint further states:

> "4. Failed to use their term 'amount financed' to disclose and describe the amount of credit which the customer had the actual use of as required by Section 226.8(c)(7) of Regulation Z." (3a).

Petitioner's contract does indeed contain the term "amount financed," right on line 3, where it belongs, in capital letters (94a).

Here there was no substitution of words, nor condensation of terms used. The term "amount financed" is used exactly as required by Regulation Z. When this error of fact was pointed out to the Federal Trade Commission representative, the response was silence and remains a part of the Federal Trade Commission complaint.

One would hope that the complaint would at least have the virtue of being accurate in so simple a matter as whether or not the contracts contain the phrase "amount financed."

The complaint also stated:

> "5. Failed to use the term 'total of payments' to disclose and describe the sum of the payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z." (4a).

In place of their term "total of payments" petitioner substituted the term "time balance," and for a good reason. A glance at the model contract proposed by the Federal Reserve Board will show why (92a).

The term "total of payments" is inaccurate and misleading in that it implies that it includes the total of all payments. This is wrong because it does not include the down payment. Petitioners substitution of the term "time balance" was more accurate, coherent and explicit. Petitioners intentions here were good and the results were apparently good too, because there were no customer complaints. Petitioners spoke to representatives of the Federal Trade Commission and they

agreed that no harm was done by the substituted phrase and the complaint was trivial (79a).

Petitioner has long since printed new contract forms using the exact term specified by Regulation Z.

No items were omitted, only three items, out of seventeen required items, were changed with no significant change in meanings.

It would be well to note now in which ways the contract *was* in accordance with Regulation Z for there were some seventeen items required, not one of which was omitted (93a):

Those items were:

1. The total dollar amount of the finance charge.

2. The date in which the finance charge begins to apply.

3. The annual percentage rate.

4. The number of payments.

5. The amount of payments.

6. The due date of payments.

7. The total of payments.

8. The amount charged for any default or deliquency, etc. or the method used of calculating that amount.

9. How the unearned part of the finance charge is calculated in the case of prepayment.

10. Charges deducted from any rebate or refund.

11. Description of any security to be held.

12. Description of any penalty charge for prepayment of principal.

13. The cash price.

14. The down payment.

15. The amount financed.

16. The finance charge.

17. The deferred payment price.

All of these items are in the contract and fourteen of these items are in the exact wording required by Regulation Z. As for the three items in dispute, two questions arise:

1. Do the changes in wording affect the original meaning intended.

2. Do the changes in wording affect the customers' ability to comparison shop for financing?

Regulation Z says as to the purpose of the regulation (2) this part implements the act, the purpose of which is to

assure that every customer who has need for consumer credit is given meaningful information with which he can compare the cost of that credit, which, in most cases, must be expressed in the dollar amount of the finance charge, and as an annual percentage rate computed on the unpaid balance of the amount financed (Section 226-1).

Again, quoting the Board of Governors of the Federal Reserve System "What You Ought To Know About Regulation Z."

> "ITS PURPOSE — the purpose of Regulation Z is to let borrowers and customers know the cost of your credit so that they can compare your costs with those of other credit sources and avoid uninformed use of credit."

Two important points to bear in mind:

> The *finance charge* and the *annual percentage rate* are really the two most important disclosures required by the regulation. They tell your customer, at a glance, how much he is paying for his credit and its relative cost in percentage terms."

So here we have the heart of the regulation, the *finance charge* and the *annual percentage rate!* The finance charge and the annual percentage rate both of which appear in petitioners' contract are exactly as required by the regulation in bold type. The two really most important disclosures (along with all the

other 15 disclosures) are where they should be, but the Federal Trade Commission makes no note of them.

We call the Court's attention to the fact that this was a brand new law and no one knew how strict enforcement would be on such immaterial matters. It is apparent that petitioners contracts abide in all respects with the spirit, and in almost all respects with the letter of the law.

Petitioners have never opposed the Federal Trade Commission regarding the changes in the contract wording but their issuing of a cease and desist order is grossly excessive punishment for infractions so trivial that not one complaining customer has come forward, not to mention that not one injured party could be found.

The complaint goes on:

> "In the ordinary course of their business as aforesaid, and subsequent to July 1, 1969, respondents caused newspaper advertisements to be published. These advertisements aided, promoted or assisted directly or indirectly in extensions of consumer credit in connection with sale of respondents goods and services. By and through the use of the advertisements, respondents: (4a)
>
> stated that 'first payment in six months . . . ' and 'no down payment — three years to pay;' thereby implying and stating that no downpayment was required in connection with consumer credit transactions. . . ."

The complaint indulges in obscurantism by taking quotes from two different ads and lumping them together. Further because the complaint does not specify the dates that the ads appeared. Furthermore, the quote "first payment in six months" in no way violates Regulation Z. The Federal Trade Commission has not demonstrated that any particular sale and extension of credit resulted directly or indirectly from the particular advertisement that the Federal Trade Commission found in violation. Most of petitioners business is in cash sales, not credit sales. Since petitioners have other sources of customer contact such as recommendations by satisfied customers, telephone solicitation, etc., the Federal Trade Commission complaint here is entirely without any substantiation that any consumer credit contracts resulted from the offending ad. The complaint states "the advertisements . . . stated that 'first payment in six months . . . no down payment — three years to pay' thereby implying and stating that no down payment was required. . . ."

The complaint here seems to imply that the above listed offers were not factual. No down payment — three years to pay, first payment in six-months were and still are terms that are available to customers, in accordance with the law.

Regulation Z states:

"Section 226.10 Advertising Credit Terms:

(a) General rule. No advertisement to aid, promote, or assist directly or indirectly any extension of credit may state.

(b) That no down payment or that a specified down payment will be accepted in connection with any extension of credit unless creditor usually and customarily accepts or will accept down payment in that amount. Respondents do usually and customarily and will accept no down payment contracts."

The complaint continues the ad failed to state:

". . . all of the following items in terminology prescribed under Section 226.8 of Regulation Z as required by Section 226.10(d)(2) thereof:

(i) The cash price
(ii) The number, amount and due dates or period of payments scheduled to repay the indebtedness
(iii) The amount of the finance charge expressed as an annual percentage rate
(iv) The deferred payment price." (5a).

The above listed items are almost impossible to include in a contractors' ad because every contract varies in price, amount financed, length of time of the loan, etc. The net result of this legal requirement has been that contractors simply do not include such items as "no money down," etc. . . in their ads even though these features are available to customers.

These weren't particularly important items in the ad, in any event, and petitioners were advertising other products at that time which did not include such features as "no money down," etc. in the ads.

It is worthy of note, however, that the four pertinent items,

(i) The cash price
(ii) The number, amount and due dates . . . of payments
(iii) The annual percentage rate
(iv) The deferred payment price

were all supplied by petitioners in their contracts with customers.

The ads that the Federal Trade Commission found defective were prepared ten (10) years prior to the complaint. They had been running virtually unchanged for those ten years (80a).

As soon as the Federal Trade Commission informed the petitioners of the defects, the ad was corrected (24a). The corrected ad has been running that way for the last five and half years.

The new regulation with the new advertising requirements were not well known in the industry. No one seemed to know the new rules. The Federal Trade Commission had done nothing to publicize those new rules to the general industry. The fact that the offending ad was innocuous is self evident. The Federal Trade Commission, contacting everyone of the petitioners' time sales customers was unable to produce one single complaining or injured buyer.

AS TO THE INITIAL DECISION — FINDINGS OF FACT

The Law Judge quotes Saul Jakel's answer to a question:

A. "I did not print new contracts (38a)."

This was referring to the new contract that had already been printed up for use in 1970. This attempt to portray petitioners as recalcitrant about printing up a second set of new contracts is misleading. On the contrary F.T.C. representative Reiss testified that negotiations regarding the wording of new contracts were going on immediately after petitioners were informed of the contracts' defects (82a-83a).

The Law Judge also stated:

> "13. It does not appear that the respondents took bona fide steps prior to July 1, 1969 to order contract forms which would satisfy the requirements for Regulation Z" (38a).

This is not correct. Petitioners have proof in the form of a cancelled check that they took bona fide steps prior to July 1, 1969 to order contract forms to meet the requirements of Regulation Z. Mr. Jakel repeatedly said that he could not remember when he ordered the new contracts.

> "Q. Were you told by anybody . . . that you were required . . . to make efforts to obtain new printed forms to be used prior to January 1, 1970 during the period from July 1, 1969 through

December 31, 1969? Were you told by anyone? A. Not that I recall (38a).

Q. To the best of your recollection, did you make any effort to obtain new printed forms? A. Yes.

Q. Prior to January 1 of 1970? A. Yes.

Q. Will you describe those efforts? A. I went to my printer and I ordered new contracts.

Q. When did you go to your printer? A. I would say somewhere before January 1st, I don't remember the exact date.

Q. January 1st of what year? A. Of 1970 (80a-81a).

THE LAW JUDGE: Mr. Jakel did you take any such steps before July 1, 1969?

PETITIONER: I don't remember, I, I don't think so. . . (38a).

THE LAW JUDGE: . . . the witness simply answered he didn't remember taking any steps, period (81a-82a).

Q. When, if you recall, did you order the contracts which bear the inscription, January, 1970? A. I honestly don't remember. . . (21a).

> Q. And you say three months before December 31, approximately you did, in any event, order new contracts for the purpose of complying? A. Yes, I, I mean, I say that I believe that is probably when I took the step to order it" (39a).

The witness, petitioner, Saul Jakel, was being questioned about a routine event (ordering of contract forms) that had taken place more than four (4) years earlier. Repeatedly he testified that he didn't remember when he had ordered the contracts.

Now, we have proof that the contracts were indeed ordered prior to July 1, 1969 as required by the Regulation (75a, 76a, 77a).

The Law Judge stated:

> "15. The following is language excerpted from an advertisement placed by the respondents in the New York *Sunday News*, Passaic-Bergen edition on December 7, 1969; 'Easy payments Arranged' . . . 'First payment in 6 months. . .'" (39a).

Neither of the above statements quoted from the ad is in violation of Regulation Z; neither is "Easy Payments Arranged" a part of the complaint.

Regulation Z:

"Section 226.10 Advertising Credit Terms

(d) Advertising of credit other than open end. No advertising to aid, promote, or assist directly or indirectly any credit sale . . . shall state,

(2) The amount of the downpayment required or that no down payment is required; the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit. . . ."

It is evident that this ad in no way violated the rule. Nevertheless, as evidence of petitioners' good faith, once the Federal Trade Commission objects to the phrases "Easy payments arranged" and "First payment in 6 months", they were removed from the ad immediately and have not reappeared in the last five and one-half years. Mrs. Reiss, the Federal Trade Commission representative, confirmed this when she said, "In the new advertising that I had seen, I found nothing objectionable" (24a).

The Law Judge stated:

"18. Advertisements appeared in the Sunday Star Ledger on the dates indicated below and employed the quoted language as indicated:

(a) . . . 'No Down Payment' . . . 'Three years to Pay'. This ad appeared on June 14, 21, and July 5, 1970" (40a).

The format for the ad in the Star Ledger had been prepared ten (10) years prior to the time of the running of the ads in 1970. Advertising in the Star Ledger was done infrequently and when an ad was required the same ten year old ad would be dusted off and run. Petitioners dealt with the Star Ledger through the P & G Advertising Agency.

Mrs. Dorso, an employee of the petitioners, testified that she had informed the agency to delete the terms "no down payment" and "three years to pay" from the Star Ledger ad.

> "Q. Tell the court what you mean. A. No down payment and three years to pay.
>
> Q. Those were the words. . . A. Those were the words that Saul (respondent Saul Jakel) said to have them taken out of the ad.
>
> Q. And you did so? A. That's correct (78a).

Petitioner, Saul Jakel testified that no ad was appearing in the Star Ledger at the time the paper was ordered to make the corrections in December, 1969.

> "Q. What did you do? A. I told Helen to see to it that. . . .
>
> Q. That's Mrs. Dorso? A. Yes . . . that they were deleted from the ad.

Q. And thereafter did you check the Daily News advertisement? A. Yes.

Q. Do you know if they were so deleted? A. Yes.

Q. Did you check the Star Ledger? A. We weren't advertising in the Ledger at that time" (78a-80a).

Since the order to change the Star Ledger ad was given in December, 1969, and the next time the ad was run was in June, 1970, a time lapse of six months, it's easy to see how a mistake could have occurred. The newspaper simply dusted off the same ad that had been used for the last ten years and ran it (23a).

Petitioner testified:

"Q. Now, was the content of each particular ad known to you? A. The content of each particular ad?

Q. That's correct. A. Well, we ran the same ad all the time, the ad did not change from year to year actually. . ." (80a).

Obviously, the Star Ledger ads were run without the necessary corrections due to a mistake by the newspaper's failure to make the requested changes when ordered to do so in December, 1969 (143a).

Petitioners were already involved in a dispute with the Federal Trade Commission stemming from the New York News ad of December, 1969. This dispute was still going on in June, 1970 when the Star Ledger ads were run. It would have been an act of sheer folly for petitioners to deliberately authorize new ads that violated Regulation Z, when they were involved with the Federal Trade Commission over just such a matter.

The ads ran with the objected to phrases due to no fault of the petitioners.

To hold them responsible for someone else's error is precisely the kind of jeopardy that petitioners find so repugnant in the order to cease and desist.

The Law Judge stated:

> "19. The advertisements described in paragraph 18 above which appeared in the Sunday Star Ledger were prepared and placed by P & G Advertising Agency . . . for and in behalf of respondents (Stip. 20).
>
> According to respondents' clerk, Saul Jakel and P & G Advertising Agency prepared the ads jointly" (48a).

The Law Judge makes it sound like a freshly prepared ad, deliberately designed to flaunt the law, at a time when the Federal Trade Commission and the petitioners were already involved in an issue over advertising. It was a 10 year old ad.

The Law Judge stated:

> "Indeed, Saul Jakel admitted that he thought it was not necessary to have new contracts before 1970 . . . . " (85a-86a).

The Regulation specifies a six month transition period prior to January 1, 1970 for using up old contracts.

The Law Judge stated:

> "(Saul Jakel . . . ordered new contracts around September, 1969. He couldn't remember taking any steps before July 1, 1969 nor could he recall any instructions to make such efforts (85a-86a).

Saul Jakel never said that he ordered new contracts around September, 1969. What he said repeatedly, was that he didn't remember when he ordered them (38a).

The Law Judge stated:

> "Section 226.6 of Regulation Z.
>
> (a) Disclosure; General Rule. The disclosures required to be given by this part shall be made clearly, conspicuously, in meaningful sequence . . . and at the time and in the *terminology prescribed.*" (emphasis supplied) (61a).

Petitioners' contract does indeed comply in making disclosures that are " . . . clearly, conspicuously, in meaningful sequence . . . and (for the most part, and for the important items) in the terminology prescribed . . . . "

The Law Judge stated:

> " . . . thereafter *the ad* reappeared inadvertently in format used before the change" (emphasis added) (47a).

This is in error. *"The ad"* never reappeared. The ad in the News was changed in December, 1969 and has remained changed to this day.

The Law Judge stated:

> "The ads which appeared in June and July of 1970, in the Star Ledger used different language stating 'No Down Payment — 3 years to pay.' The format was obviously not that of the old ad" (48a).

This is in error. When he states, "The ads which appeared in June and July of 1970 in the Star Ledger used different language . . . ," he is in error. He is comparing the language of the News ad with that of the Star Ledger. Those ads always used different language.

Saul Jakel testified to the fact that the ads in the News and the Star Ledger had always been different:

> "Q. . . . the advertisement that you use in the Daily News, is this also the same copy that you were using in other newspapers? A. Not identical."(82a).

The Law Judge should have been comparing the language used in the Star Ledger ads of June, 1970 with the previous Star Ledger ads. Then he could not make the mistake of saying, "The format was obviously not that of the old ad."

The ad was indeed the same ad that had been used in the Star Ledger for the past ten (10) years.

The Law Judge stated:

> "Nor can the respondents escape responsibility for the 1970 ads simply because they were placed through their advertising agency . . . . " (48a).

Petitioners do not put the responsibility for the 1970 ads on the advertising agency, but rather upon the newspaper; and they do indeed seek to escape the responsibility for that newspaper's error!

Some six months earlier (at a time when the ad in the Star Ledger was not running) the newspaper, through the P & G Advertising Agency, had been informed that the ad required changing.

The Law Judge was aware of this:

> "My notes indicate that she (Mrs. Dorso) testified that she was told by Mr. Jakel to delete certain things and that she called P & G Advertising Agency and told them" (80a).

Mr. Jakel testified to this (79a).

Here we have unchallenged testimony that the Star Ledger was responsible for not correcting the ad.

The Law Judge stated:

> "That the ads violated Regulation Z is incontrovertible. Section 226.10 (d) of the Regulation provides: No advertisement to aid . . . (any) credit sale . . . shall state . . . (a) the amount of the down payment required or that no down payment is required, the amount of any finance charge, the number of installments or the period of repayment or that there is no charge for credit . . . .
>
> The advertisements itemized in the findings above while speaking of down payments and the period of repayment . . . were therefore, violative of Regulation Z" (48a).

It is an error to say that the December, 1969 ad in the News speaks of " . . . down payments and the period of repayment." It does not. The objected to phrases from this ad are "Easy payments arranged" and "First payment in 6 months."

Neither of these terms refers to either a down payment nor the period of repayment. The regulation refers to two (2) types of payments.

"Down payment" — meaning a deposit or such payment made in advance of the balance to be financed . . . and,

"Installment payment" — meaning the payment that is to be made periodically on the balance to be financed.

The prohibition as to down payments is that the ad may not state " . . . the amount of the downpayment or that no down payment is required."

Obviously the terms used in the News ad, "easy payments arranged" and "first payment in 6 months" in no way indicate the amount of the down payment or that no down payment is required. In fact, they make no reference to the down payment.

Nor can it be argued that "first payment in 6 months" implies that there is no down payment required. There could very well be a down payment with the first (installment) payment beginning six months later. In actual practice it worked both ways, with some contracts having a down payment and some not having a down payment, while in both cases the first (installment) payment began six months later.

The prohibition as to installment payments is that the ad may not state " . . . the amount of any installment payment . . . (or) . . . the number of installments."

Obviously the terms "easy payments arranged" and "first payment in 6 months," in no way indicate "the amount of any installment payment nor the number of installments".

So the News ad has to be omitted from consideration because it did not violate the regulation.

As for the Star Ledger ads of June, 1970, what happened is clear.

In December, 1969 the Federal Trade Commission notified petitioners of alleged defects in their ad then appearing in the News. As it turns out the ad in no way violated the regulation but petitioners immediately changed the ad and it has run that way ever since.

At the same time, December, 1969, petitioners ordered changes to be made in the Star Ledger ad although the ad was not appearing at that time, had not appeared for some time prior to that time, and would not appear for another six months.

One can understand how, after so long a lapse in activity, the newspaper could have made a mistake and neglected to make a change in an ad; a change that had been ordered six months previously.

The Star Ledger's ad format had been prepared some ten (10) years previously and had not been altered in all that time.

When the order finally came to run the ad, the Star Ledger simply dusted off the old ad and ran it without the corrections that had been requested six months earlier.

Consider this, from December, 1969 up to the time of the running of the ad in the Star Ledger in June, 1970 the Federal Trade Commission was trying to bludgeon the petitioners into signing a consent order relative to the News ad; an ad that was not in violation but which had been changed anyhow.

Would two small businessmen, who had cooperated in every way with the Federal Trade Commission, in order to avoid their harassment, now deliberately flaunt the law and prepare a new ad that violated the regulation?

It should be emphasized that as soon as petitioners were told of the deficiencies in the Star Ledger, they changed the ad and have kept it that way for the last five years.

It is clear that the placing of the wrong ad in the Star Ledger was the newspaper's fault.

Indeed, it was precisely the fear of being put in a position of being held responsible for someone elses actions, such as this incident with the Star Ledger, that was a factor in petitioners' decision not to sign the Federal Trade Commission's consent order.

Even if the cease and desist order were justified, and it most emphatically is not, what purpose it would serve at this late date is not clear.

The cease and desist order is a nullity. The petty corrections required in the contracts were made long ago and will remain that way. The ads were changed long ago and will remain that way.

Petitioners have shown by their actions that they can be relied upon to continue the ads and contracts without violations. The infractions were so minor and harmless that reasonable people would be satisfied with that.

The Law Judge ordered:

> "that respondents deliver a copy of this order to Cease and Desist to all present and future personnel . . . . " (53a).

" . . . all present and future personnel . . . . " That's a life sentence, for a non-crime! The embarrasment of interviewing a new prospective employee and then having to present him with a copy of the order is too much. No amount of explaining away would eradicate the feeling of the new co-worker that he was working for criminals. This order is certain to cause good, qualified prospective employees to refuse employment in petitioners' firm upon being handed the cease and desist order This is punishment to a business that it doesn't deserve. Even if petitioners had really committed some serious crime this would be excessive punishment. In this case, its malicious harassment and the Court should not allow it.

The Law Judge further ordered:

> " . . . each individual respondent named herein promptly notify the commission of the discontinuance of his present business of employment and of his affiliation with a new business or employment. Such notice shall

> include respondents' current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities." (53a).

Even a murderer can eventually finish serving his sentence. The order is a violation of privacy and a denial of freedom in forcing petitioners to report to the Federal Trade Commission every move that petitioners might make for the rest of their lives.

The Law Judge ordered:

> ". . . that respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation which may affect compliance obligation arising out of the order." (54a).

The order is a life sentence of being on probation.

The order represents serious and permanent injury to citizens who have not injured anyone.

Point II

The final order was harsh and excessive punishment.

AS TO THE FINAL ORDER

> "The Law Judge found that respondents failed to make the required disclosures (a) in their printed contract forms. . ." (57a).

This is an error. Nowhere did the Law Judge find that petitioners had failed to make the disclosures as required by the meaning of Regulation Z. The complaint regarding the contracts claimed improper terminology only, all disclosures were in the contracts as required and were never an issue.

> "Respondents' major contentions on this appeal are . . . (4) that . . . the advertising agency . . . caused the publication of the advertisements in question;" (58a).

Not true. Petitioners claim that the newspaper was at fault for not changing the ad as instructed.

It was obviously and clearly a mistake on the part of the newspaper media, and did not occur again.

> "With regard to the first of the issues . . . the law judge interpreted this provision as requiring that respondents undertake to *order* new conforming printed contracts prior to July 1, 1969" (60a).

Issue #1 reads as follows:

> "1. Whether respondents failed to obtain new contract forms prior to, during or subsequent to the period beginning July 1, 1969 (effective date of the statute) and terminating December 31, 1969 which were in compliance with the requirements of Regulation Z" (3a).

No word is contained herein relative to "*ordering*" new contracts prior to July 1, 1969. Obviously the matter was irrelevant to this issue above quoted.

> "There is little in the way of a significant dispute on the facts. . ." (61a).

Petitioners are disputing the bulk of the facts in this case.

> "Nor is there any dispute in this record on the point that respondents were repeatedly advised by the Commission's staff that their contract forms failed to make consumer credit disclosures in the precise language required. . ." (62a).

This statement obscures the fact that while petitioners were advised by the Commission's staff that their contracts failed to use certain precise language (in three places -- out of seventeen) at no time did the Commission's staff contend that those contract forms failed to make consumer credit disclosures in a meaningful and complete way as required by the regulation. It further obscures the information that the Commission's staff

advised the petitioners of the contract forms' deficiencies after the fact! To imply that petitioners were recalcitrant about printing a (second) set of new contracts is misleading. Indeed Mrs. Reiss, the Federal Trade Commission's representative testified that she had discussed possible wording changes in the new contracts.

> "A. There was only one area which I agree with him, and after a discussion in the office here, I did come back to him and tell him the way we thought it could be done" (83a).

And again Mrs. Reiss says:

> "A. Well, there were words unpaid balance of the cash — after stating cash price and down payment, there are a whole variety of words — amount financed, unpaid balance of the cash and unpaid balance. Because there were no late charges or other additional charges in this case, all the numbers for unpaid balance of the cash price and unpaid balance and amount financed essentially with the same numbers. He thought it was silly to keep restating all these things because they were the same numbers. I said that they had to be restated but what I would try to do was to come back to New York here and speak to the office and find out whether all these words could not be strung together on one line instead of having to be set out in three separate lines.

Q. And did you discuss that in the office? A. Yes, we did.

Q. And when did you go back to see Mr. Jakel and tell him your decision? A. I didn't go back to tell him my decision.

Q. How did you tell him? A. It was in the letter" (83a).

Here we have evidence that petitioners were in discussion with the Federal Trade Commission representatives relative to printing up new contract forms.

"Q. Now, this note which you admit making says, 'We would appreciate a copy of the new installment contract as soon as it is devised.' Is that what it is? I can't read your writing. A. Yes, devised" (83a).

So here again Mrs. Reiss confirms that petitioners were willing to print new contract forms.

"Q. Tell us about that. A. The reason for my call was to find out what was happening with the affidavits and what was happening with the contracts; and in that conversation he told me they were going to finally — how their contracts comply with the wishes of this office and that a galley was going to go to the printer and that when the galley was ready he would send it to me" (82a).

Here we have Mrs. Reiss confirming petitioners' testimony that new contracts were in the works.

> "The purpose of that statute is to permit the ordinary consumer . . . to receive the kind of credit information that will allow him effectively to compare the credit terms being offered in the market place and thus to 'shop' for the most favorable terms available" (86a).

Petitioners agree. Nowhere is it shown how petitioners' contract fails to do exactly that. It is time that the Federal Trade Commission addressed itself to the fact of the pettiness and harmlessness and of the violations' relative unimportance in the consumers' need to be able to "shop" for better "credit terms in the marketplace."

The three miniscule changes in wording that this case finally comes down to were immaterial. It does nobody any good for the Federal Trade Commission to repeat that the changed terms violated the regulation. Some note should be taken of the fact that they were harmless and not very important.

The fact is that in "shopping" for better credit terms there is only *one* really important thing that the customer has to know and that is the rate of interest. All the rest is secondary. Petitioners' contracts have always supplied that really vital information in bold type as the regulation requires.

While the Federal Trade Commission may very well insist on new contracts containing exact terminology, petitioners' offer

to print those new contracts should have been sufficient to end the matter.

The Federal Trade Commission tried to find customer complaints over the contracts and could find none. The changed wording was motivated by a sincere desire to clarify, not to obscure.

> "According to respondents, the allegedly illegal advertisement in the *News* (CX7) was placed inadvertently" (86a).

Not true. The ad in the News was not placed "inadvertently." Petitioners only point out this unimportant error to show the prevalence of confusion that seems to dominate in the Federal Trade Commission regarding this issue.

> "It is undisputed that the December 7, 1969 advertisement in the *News* . . . failed to make certain credit term disclosures" (65a).

The December 7, 1969 ad in the News did not have to make the "certain credit terms disclosures" that the Commission refers to. The ad makes no reference to down payment or no down payment, or the size or number of payments so it in no way violates the regulation.

> "Nor is it disputed that these violations were brought to the attention of the respondents, both orally and in writing, including personal visitation by Commission staff members" (65a).

A false impression is given here that petitioners were advised and disregarded the advice and repeated the violation. This is wrong. The first ad in the News (December 1969) was not in violation. When the Federal Trade Commission informed petitioners of their objections to the ad, petitioners changed the ad immediately. It has remained changed. The Federal Trade Commission attempted to pressure petitioners into signing an affidavit (consent order) admitting that the ad was in violation. This petitioners refused to do. A long dispute followed. This dispute was still going on in June, 1970 when the Star Ledger had been told to change its ad and failed to do so.

> "Respondent Jakel . . . conceded that he did not check the *Ledger* to determine whether the agency had, in fact, altered the suspect advertising. Nor did respondent's clerk check the *Ledger*" (65a).

It was not for the agency to change the ad. It was for the newspaper to change the ad. The Star Ledger made the mistake. In telling the Star Ledger to change the ad, petitioners and their agency did what they had to do.

Petitioner had no reason to check the Star Ledger since he had no reason to believe the ad would be in violation. Even if petitioner had checked the Ledger and found the violation, it would have been after the fact, and would have made no difference. It made no difference to the Federal Trade Commission that the petitioners immediately thereafter changed the ad.

So, Commissioner Thompson raises a specious point when he says "Respondent Jakel . . . conceded that he did not check the Ledger." Petitioners did change the ad in the Ledger after being told of its irregularities, has that altered the Federal Trade Commission's course of action? Commissioner Thompson's other specious point is in implying that the agency was the one to physically change the ad. The newspaper retains possession of the mat, it was for them to make the change after being told to do so.

Petitioners should like to conclude this section by quoting from Newsweek (July 22, 1974) regarding a case involving Sears, Roebuck & Co., a somewhat larger company than petitioners'; (petitioners employ about eight people).

> "The proposed complaint also drew a rare dissent from one of the FTC's five commissioners. Mayo J. Thompson argued that it contained 'no showing of probable consumer injury' ".

Would that Commissioner Thompson had been as sensitive to that issue in this case?

CONCLUSION

The avid readiness of the Federal Trade Commission to stigmatize small businessmen is shown from the following excerpt from a Federal Trade Commission news release.

> " . . . the agency said that one of its administrative law judges, Harry R. Hinkes had

> found that Beauty-Style Modernizers, Inc., had violated the law by using contract forms that were out of date and did not inform buyers seeking credit of their rights under the law" (N.Y. Times, September 19, 1973).

Petitioners' contracts were not out of date and neither the Federal Trade Commission complaint nor the order ever made the unfounded charge that buyers were not informed of their rights.

At that point in September, 1973, the Federal Trade Commission did more harm to petitioners than ever they deserved for anything they have been accused of by the Federal Trade Commission. The key word, never uttered by the Federal Trade Commission is "injury". Since no one was injured, the Federal Trade Commission won't talk about it. But injury there is — to the petitioners! Permanent, substantial injury.

The complaint was a "catch-all" puffed up for appearances sake. Petitioners have taken each document, the complaint; the initial order; the final order; the appellee's brief, and by supplying the facts, cut the Federal Trade Commission case down to size.

One must presume that the Federal Trade Commission objected to petitioners' wording in the contracts because it was not in the best interests of the customers. Petitioners offered immediately to change their contracts if the Federal Trade Commission would drop its self-serving demand that petitioners sign a consent order relative to the News ad which was not in

violation (petitioners had changed the News ad nevertheless). It is revealing that the Federal Trade Commission chose to continue harrassing the petitioners rather than get the contracts changed to benefit the consumers they are supposed to protect. Or does this reveal that they knew the contracts were harmless? The Federal Trade Commission in attempting to build its case, contacted a large number of customers who had signed these "defective" contracts seeking complaints. They found none; indeed, at no point in these entire proceedings does the Federal Trade Commission make mention of an injured consumer. There weren't any.

The Federal Trade Commission says that uniform phraseology is necessary in the contracts in order that the consumer may "shop" for better credit rates in the market place. But the Federal Trade Commission failed to show that a single one of the petitioners' customers tried to "shop" for better credit rates and was unable to do so because of deficiencies in the petitioners' contracts.

At no point have we seen it demonstrated that customers were denied any information that they had to know.

Not one mitigating factor has been allowed to enter the case. The fact is that the peitioners' wording corresponds exactly with Regulation Z requirements in fourteen out of seventeen terms in the contract, including the two that the regulation considers most important, the annual percentage rate and the finance charge.

Regarding the ads we know that the Federal Trade Commission has no case in either instance. The News was not in violation, and the Star Ledger was the fault of the newspaper.

No note is taken of the fact that the Federal Trade Commission failed to make known to members of the industry its requirements. In view of the fact that this was a new law, some consideration for the fact that errors could have occurred should have been taken.

As to the intent of petitioners' contract, it was to clarify not to obscure. So petitioners' intentions were good.

As to the effect of petitioners' contract, the effect was full disclosure in a clear and logical manner of all the information required by the Truth in Lending Law, so the result of petitioners' actions were good.

The petitioners were in all ways and at all times co-operative and courteous with the various Federal Trade Commission employees involved in this matter and never refused any of their requests (except signing a consent agreement).

We know that nothing done by petitioners has harmed anyone.

We know that the issuance of a cease and desist order against the petitioners does them great harm.

It appears that the Federal Trade Commission must score a certain number of "victories." In so doing, they become oppressors of citizens rather than protectors.

The cease and desist order is a life sentence of being on probation for a non-crime.

We ask that the order to cease and desist be denied or modified.

Respectfully submitted,

s/ Saul Jakel
Petitioner pro se

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SUPREME COURT, U. S.

FILED
JUL 5 1975
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1975

No. 75-24
75-25

FEDERAL TRADE COMMISSION,

Respondent,

vs.

BEAUTY-STYLE MODERNIZERS, INC., a corporation and MORRIS JAKEL and SAUL JAKEL, individually and as officers of said corporation,

Petitioners.

JOINT APPENDIX

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APPENDIX

COMPLAINT

(Filed September 18, 1972)

In the Matter of

BEAUTY-STYLE MODERNIZERS, INC.,
a corporation, and
MORRIS JAKEL and
SAUL JAKEL,
individually and as officers
of said corporation.

DOCKET NO.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Beauty-Style Modernizers, Inc., a corporation, and Morris Jakel and Saul Jakel, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Complaint

PARAGRAPH ONE: Respondent Beauty-Style Modernizers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 432 Central Avenue, Newark, New Jersey.

Respondents Morris Jakel and Saul Jakel are the President and General Manager respectively, of said corporation. They formulate, direct and control the consumer credit policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PARAGRAPH TWO: Respondents are now, and for some time last past have been, engaged in the sale of home improvement materials, supplies and installation services to the public.

PARAGRAPH THREE: In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit, as "consumer credit" and "arrange for the extension of consumer credit" are defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PARAGRAPH FOUR: Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused and are causing their customers to

enter into contracts for the sale of respondents' goods and services. On these contracts, hereinafter referred to as "the contract", respondents provide certain consumer credit cost information. Respondents provide these customers with no evidence of or information concerning the credit transaction, other than on the contract and the right of rescission form.

PARAGRAPH FIVE: By and through the use of the contract set forth in PARAGRAPH FOUR respondents have:

1. Failed to obtain new contract forms or to alter their existing stock of contract forms prior to, during and subsequent to the period beginning July 1, 1969 and ending December 31, 1969, as required by Section 226.6(k) of Regulation Z.

2. Failed to use the term "cash downpayment" to disclose and describe the amount of the downpayment in money made in connection with the credit sale, as required by Section 226.8(c) (2) of Regulation Z.

3. Failed to use the term "unpaid balance of cash price" to disclose and describe the difference between the cash price and the cash downpayment, trade-in or total downpayment, as required by Section 226.8(c) (3) of Regulation Z.

4. Failed to use the term "amount financed" to disclose and describe the amount of credit which

the customer had the actual use of, as required by Section 226.8(c) (7) of Regulation Z.

5. Failed to use the term "total of payments" to disclose and describe the sum of the payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

PARAGRAPH SIX: In the ordinary course of their business as aforesaid, and subsequent to July 1, 1969, respondents caused newspaper advertisements to be published as "advertisement" is defined in Regulation Z. These advertisements aided, promoted or assisted directly or indirectly in extensions of consumer credit in connection with the sale of respondents' goods and services. By and through the use of the advertisements, respondents:

Stated that "1st Payment in 6 months — Call or Write Now!" and "NO DOWN PAYMENT — 3 YEARS TO PAY"; thereby implying and stating that no downpayment was required in connection with consumer credit transactions, without also stating all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10 (d) (2) thereof;

(i) The cash price;

(ii) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(iii) The amount of the finance charge expressed as an annual percentage rate; and

(iv) The deferred payment price.

PARAGRAPH SEVEN: Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this day of A.D. 197 , issues its complaint against said respondents.

NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the day of A.D. 19 , at o'clock is hereby fixed as the time and as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

Complaint

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the hearing examiner shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the hearing examiner, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

The following is the form of order which the Commission has reason to believe should issue if the facts are found as alleged in the complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions as to Beauty-Style Modernizers, Inc., a corporation, and Morris Jakel and Saul Jakel, individually and as officers of said corporation, might be inadequate to fully protect the consuming public, the Commission may order such other relief as it finds necessary or appropriate.

ORDER

IT IS ORDERED that respondents, Beauty-Style Modernizers, Inc., a corporation, its successors and assigns and Morris Jakel and Saul Jakel, individually and as officers of said corporation and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with any consumer credit sale or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (P.L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

2. Failing to use the term "cash downpayment" to disclose and describe the amount of the downpayment in money made in connection with the credit sale, as required by Section 226.8 (c) (2) of Regulation Z.

3. Failing to use the term "unpaid balance of cash price" to disclose and describe the difference between the cash price and the cash downpayment, trade-in or total downpayment, as required by Section 226.8(c) (3) of Regulation Z.

4. Failing to use the term "amount financed" to disclose and describe the amount of credit which the customer has the actual use of, as required by Section 226.8(c) (7) of Regulation Z.

5. Failing to use the term "total of payments" to disclose and describe the sum of the payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

6. Representing, directly or by implication, in any advertisement as "advertisement" is defined in Regulation Z the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the

following items are stated in terminology prescribed under Section 226.8 of Regulation Z:

(i) The cash price;

(ii) The amount of the downpayment required or that no downpayment is required, as applicable;

(iii) The number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(iv) The amount of the finance charge expressed as an annual percentage rate; and

(v) The deferred payment price.

IT IS FURTHER ORDERED that respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation or placing of advertising, and the respondents secure a signed statement acknowledging receipt of said order from each such person.

IT IS FURTHER ORDERED that respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale, resulting in the emergence of a successor

corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

IN WITNESS WHEROF, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C. this day of A.D., 1972.

By the Commission.

Charles A. Tobin,
Secretary.

S E A L

Issued:

ANSWER TO COMPLAINT

(Filed October 12, 1972)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

BEAUTY-STYLE MODERNIZERS, INC.,
a corporation, and
MORRIS JAKEL and
SAUL JAKEL,
individually and as officers of said corporation

DOCKET NO. 8898

ANSWER TO COMPLAINT

Respondents by way of answer to the Complaint in the above matter, hereby state as follows:

ANSWER TO PARAGRAPH 1

Respondents neither admit nor deny the allegations of Paragraph 1 of the complaint but leave complaining party to its proof, thereon.

ANSWER TO PARAGRAPH 2

Respondents admit the allegations of Paragraph 2 of the complaint.

Answer to Complaint

ANSWER TO PARAGRAPH 3

Respondents neither admit nor deny the allegations of Paragraph 3 of the complaint but leave complaining party to its proof thereon.

ANSWER TO PARAGRAPH 4

Respondents deny the allegations of paragraph 4 of the complaint.

ANSWER TO PARAGRAPH 5

Respondents deny all the allegations of sub-paragraphs 1, 2, 3, 4, and 5 of the complaint.

ANSWER TO PARAGRAPH 6

Respondents deny the allegations of paragraph 6 of the complaint.

ANSWER TO PARAGRAPH 7

Respondents deny the allegations of paragraph 7 of the complaint.

Wherefore, respondents request dismissal of the complaint.

Answer to Complaint

SPECIAL DEFENSE

Respondents state by way of special defense, that substantial compliance with all of the allegations of the complaint were at all times performed by respondents.

s/ Martin Gelber
MARTIN GELBER
Attorney for Respondent

STIPULATION

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

BEAUTY-STYLE MODERNIZERS, INC.,
a corporation, and
MORRIS JAKEL and
SAUL JAKEL,
individually and as officers
of said corporation.

DOCKET NO. 8898

AGREED UPON ISSUES OF FACT AND LAW

IT IS HEREBY STIPULATED AND AGREED to by and between counsel for respondents Beauty-Style Modernizers, Inc., Morris Jakel and Saul Jakel, and counsel for the Federal Trade Commission, that the following constitutes the contested issues of fact in this proceeding:

1. Whether respondents failed to obtain new contract forms prior to, during or subsequent to the period beginning July 1, 1969 and terminating December 31, 1969 which were in compliance with the requirements of Regulation Z.

2. Whether the retail installment contract forms as altered for the period July 1, 1969 to December 31, 1969 complied with the requirements of Regulation Z.

Stipulation

3. Whether respondents authorized, approved or ratified, expressly or impliedly, the publication of the various advertisements identified as Commission Exhibits 9(a), 9(b), and 9(c).

By/ Donald A. Rosales
for Commission Attorney

By/ James Manos
Counsel in support of complaint

Counsel for respondents

Dated:

EXCERPTS OF TRANSCRIPT OF PROCEEDINGS BEFORE THE FEDERAL TRADE COMMISSION

(Commencing at page 184a, lines 3 to 10)

* * *

"the transaction with the customer simultaneously with the transaction and the signing of the contract.

BY MR. GELBER:

Q. Is that right? A. Right.

Q. So that if a salesman walked out of a customer's home, he would have a signed contract and a signed disclosure statement?"

* * *

(Commencing at page 185a, lines 3 to 12)

* * *

"A. I would say that it was very shortly after we received our first notice from the FTC in the person of Bonnie Reese that these contracts were in violation.

I would say it's a matter of perhaps a month.

Excerpts of Transcript

Q. So that in point of time, then, it would be around — you know, it's a matter of calculation.

You stated that your first contact with Mrs. Reese was the first quarter of 1970, around March, so it would be, say, May of 1970 at least that you were using them? A. Thereabouts."

* * *

(Commencing at page 187a, lines 3 to 6)

* * *

"JUDGE HINKES: Well, now, I call your attention to stipulation 12, which says that 'beginning in December of 1970, customers of the respondents were provided with a bank disclosure form,' "

* * *

(Commencing at page 278a, lines 21 to 25)

* * *

"Q. Did you take any steps prior to July 1, 1969 to obtain new printed forms to comply with Regulation Z?

Excerpts of Transcript

MR. GELBER: Objection; irrelevant.

JUDGE HINKES: Sustained.

MR. MANOS: Your Honor, may I be heard?"

* * *

(Commencing at page 279a, lines 5 to 14)

* * *

"MR. GELBER: If Your Honor please, I bring your attention to the agreed upon contested issues of fact and law, and it is my impression the period is from July 1st, 1969 to December 31, 1969 with which we are dealing.

MR. MANOS: We are dealing, also, with a period prior to July 1, 1969, during and after the Complaint set that forth.

I wish that Your Honor would reconsider your ruling. I have reference to 226.7(k), Your Honor, on Page 11."

* * *

(Commencing at page 281a, lines 5 to 25)

* * *

Excerpts of Transcript

"MR. GELBER: I wish to bring to your attention, Your Honor, that the Complaint and the agreed upon contested issues of fact and law both terminate as far as the Complaint is concerned with December 31st of 1969.

There is no complaint for any use or violation after that date. The only purpose that that information was introduced to this Court for was to explain the fact that if he did use them in '69 and if this was a violation in '69 the reason for it was he had been given permission to use it not only in 1969 but thereafter.

But I am not concerned and I would ask this Court not to be concerned with any period other than as set forth in the Complaint and the issues of law and fact as agreed upon, and I read to you — whether we talk about any time period before July 1st, 1969 — we can go back as far as you want before that — it terminates clearly on December 31st, 1969 as an issue in this case, so that if I were at this point to say to His Honor and to you that we would not even have the misleading, as we claim, the estoppel issue in this case, you would then have to be satisfied with the period up to December 31st, 1969 and — "

* * *

Excerpts of Transcript

(Commencing at page 282a, lines 11 to 12)

* * *

JUDGE HINKES: The objection to the question is overruled and the witness will answer."

* * *

(Commencing at page 287a)

* * *

"left-hand corner 170 are identical in printed form! A. Safely assume they're identical?

Q. Yes, the printed portions only. A. Well, these are time payment sales contracts.

Q. Yes, I'm not talking about the typed, anything that might be typed or written in. I am talking about the form of the printed contract.

MR. GELBER: Trying to explain, Your Honor —

BY MR. MANOS:

Excerpts of Transcript

Q. Would it be identical in all cases if it bears the number 170 in the lower left-hand corner? A. I would imagine so.

Q. Were they all — how many times did you have the form printed? A. Once.

Q. And how many contracts did you order at that time? A. The M means a thousand.

MR. MANOS: No further questions, Your Honor.

MR. GELBER: I have a few questions, if I may.

JUDGE HINKES: Go ahead.

REDIRECT EXAMINATION

BY MR. GELBER:

Q. First, as to what we are talking about now, sir, when, if you recall, did you order the contracts which bear the inscription January 1970? [288a] A. I honestly don't remember, but knowing the usual length of time that my printer takes, I would presume I probably gave him the order approximately three months earlier.

Excerpts of Transcript

Q. Do you belong to any organizations which are in the trade, in the home improvement field? A. No.

Q. Or did you then? A. No.

Q. Do you have any access to any of their communications — A. No.

Q. — or booklets? A. No, sir.

Q. Where did you get the information that you were entitled to exhaust your existing stock of old contracts, as you have stated, from July 1st of '69 through December of '69? A. As I recall it, I got that information from the bank.

Q. The bank with which you were discounting the business, is that right? A. Yes.

Q. Now, you did, in fact, take steps to change that Exhibit No. 2 by adding something to it, did you not? A. Yes.

Q. After July 1st, 1969?"

* * *

(Commencing at page 292a, lines 2 to 6)

* * *

Excerpts of Transcript

"Q. Had you run an ad in The Daily News during that six—month period? A. Yes.

Q. Every week? A. Yes."

* * *

(Commencing at page 293a, lines 10 to 15)

* * *

"A. No, the ad was changed.

Q. Did you place any ads in the Star Ledger, to your knowledge, through your advertising agency, before the ad that was complained about in the Star Ledger but during that six-month period from The News? A. No, I don't think any ads ran in the Ledger."

* * *

(Commencing at page 297a, lines 9 to 14)

* * *

"Q. Why do you think that's important as it's dated 1971? A. Because with all the tenacity that the FTC has pursued me about changing my contracts, when I finally had new contracts

printed up and presented to them for their approval, they didn't think it important enough to either say yes or no, or approve it or disapprove the new contracts."

* * *

(Commencing at page 386a, lines 1 to 5)

* * *

"Did you find out anything about the advertising which you had found objectionable on February 2nd? A. In the new advertising that I had seen, I found nothing objectionable.

"Q. And that was on February 2nd?

* * *

(Commencing at page 452a, lines 1 to 25)

* * *

"and that is attached here."

So the issue is whether that is in compliance with Regulation Z, referring, of course, to the contract forms which were obtained after July 1st, 1969.

My answer was:

Excerpts of Transcript

'Well, this is a matter of law as to whether it's in compliance.

'JUDGE HINKES: Very well. I understand that. Let's go to the second item.

'MR. MANOS: Similarly with number 2.

'JUDGE HINKES: Similarly with 2 which is whether the retail installment contract forms as altered for the period July 1st, 1969 to December 31st, 1969, complied with the requirements of Regulation Z.

'All right. That again is an issue of law.

'The documents will be received in evidence, presumably, and the arguments will then be had whether or not they comply with Regulation Z.'

What complies with Regulation Z?

Whether these contracts, as Judge Hinkes said, during the period between July 1st, 1969 to December 31st, 1969 complied.

That's on Page 7 of the pre-trial order.

Now, I was addressing myself to that fairly continuously during this case. If you will read the"

* * *

INITIAL DECISION

(Filed August 31, 1973)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

INITIAL DECISION

DOCKET NO. 8898

BEAUTY-STYLE MODERNIZERS, INC.,ET AL

AUGUST 31, 1973 HARRY R. HINKES
ADMINISTRATIVE LAW JUDGE

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

BEAUTY-STYLE MODERNIZERS, INC., a corporation, and
MORRIS JAKEL and
SAUL JAKEL, individually and as officers of said corporation.

DOCKET NO. 8898

Harry R. Hinkes, Administrative Law Judge

James Manos, Esq., and Donald Rosales, Esq.
New York, New York
Counsel Supporting the Complaint;

Martin Gelber, Esq.
New York, New York
Counsel for Respondents.

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint in this proceeding on September 18, 1972, charging the respondents with failure to comply with the provisions of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System and, pursuant to Section 108 of said Act, with having violated the Federal Trade Commission Act. By answer duly filed respondents admitted only that they are and were engaged in the sale of home improvement materials, supplies and installation services to the public. Otherwise, respondents' answer either denied, or neither admitted nor denied, all of the other allegations of the complaint. Respondents also interposed "substantial compliance" as a special defense. By order dated January 17, 1973, the undersigned ruled that Paragraphs I and III of the complaint be deemed admitted because of the respondents' failure to conform to the requirements of Section 3.12(b)(1)(ii) of the Rules of Practice of the Commission by neither admitting nor denying the allegations contained in those paragraphs. In addition, respondents' special defense of "substantial compliance" with the requirements of Regulation Z of the Truth in Lending Act was sticken as insufficient at law or as failing to state a legal defense. On April 5, 1973, counsel to the parties in this proceeding executed an "Agreed Upon Statement of Relevant Facts and Documentary Evidence." This

was supplemented by another Statement executed by counsel to the parties on April 10, 1973. At around the same time counsel to the parties also executed a stipulation specifying the contested issues of fact and law in this proceeding:

> 1. Whether respondents failed to obtain new contract forms prior to, during or subsequent to the period beginning July 1, 1969 and terminating December 31, 1969, which were in compliance with the requirements of Regulation Z.
>
> 2. Whether the retail installment contract forms as altered for the period July 1, 1969 to December 31, 1969, complied with the requirements of Regulation Z.
>
> 3. Whether respondents authorized, approved or ratified, expressly or impliedly, the publication of the various advertisements identified as Commission Exhibits 9(a), 9(b), and 9(c).

Evidentiary hearings were held at the New York Regional Office of the Federal Trade Commission on June 5, 6, and 7, 1973. Briefs have been submitted by the parties and have been given careful consideration. Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this Initial Decision, are hereby denied. To the extent the Proposed Findings, Conclusions and Briefs submitted by the parties have not been adopted by this

decision in the form proposed or in substance, they are rejected as not supported by the evidence or immaterial.

References to the record are made in parentheses using the following abbreviations:

CX — Commission's Exhibit

RX — Respondents' Exhibit

RAC — Respondents' Answer to Complaint

Stip — Agreed upon statement of fact and evidence

Tr. — Transcript of testimony.

Having reviewed the record in this proceeding with care and having considered the demeanor of the witnesses as they testified, together with the Proposed Findings, Conclusions and Briefs submitted by the parties, I make the following:

FINDINGS OF FACT

1. Respondent Beauty-Style Modernizers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 432 Central Avenue, Newark, New Jersey (Order of January 17, 1973 and Stip. 1).

2. Respondent Morris Jakel is an individual who is president of the corporate respondent. He formulates, directs

and controls the consumer credit policies, acts and practices of the corporate respondent, including the acts and practices set forth in the complaint. His address is the same as that of the corporate respondent (Order of January 17, 1973).

3. Respondent Saul Jakel is an individual and the general manager of the corporate respondent. He formulates, directs and controls the consumer credit policies, acts and practices of the corporate respondent, including the acts and practices set forth in the complaint. His address is the same as that of the corporate respondent (Order of January 17, 1973 and Stip. 2).

4. Respondents are now, and for sometime last past have been, engaged in the sale of home improvement materials, supplies and installation services to the public (Stip. 3; RAC).

5. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit, as "consumer credit" and "arrange for the extension of consumer credit" are defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System (Stip. 4; Order of January 17, 1973).

6. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales as "credit sales" is defined in Regulation Z, respondents have caused and are causing their customers to enter into contracts for the sale of respondents' goods and services (Stip. 5; CX 6(a)-6(iii)).

Initial Decision

7. The contracts described in Finding 6 above were signed by respondents, their employees, agents or authorized representatives and the customers identified thereon (CX 6(a)-6(iii); Stip. 13; CX 11(a), (b)).

8. Prior to, during and subsequent to the period beginning July 1, 1969 and ending December 31, 1969, in the normal course of their business activities, respondents utilized in the completion of customer agreements a printed contract form identified as CX 2, to which respondents had made additions by means of a rubber stamp in an attempt to alter the contract's format to the requirements of Regulation Z (Stip. 8; CX 2, 6(fff 1, 2), 6(hhh, 1, 2), 6(iii), 11(a), (b)).

9. Respondents continued the use of CX 2 as altered at least up to February 1970 (Stip. 9; CX 6(a), (b), (c); Stip. 13).

10. Subsequent to February 7, 1970, respondents used in the normal course of their business a new printed contract form identified as CX 3(a), (b), in connection with their consumer sales agreements (Stip. 9; CX 6(d)-6(aaa-1).

11. Beginning July 1, 1969 and continuing to at least July 1972, the respondents on their contracts:

> (a) Did not use the specific term "cash downpayment" to disclose and describe the amount of the downpayment in money made in connection with the credit sale, but used the language "deposit herewith";

(b) Did not use the specific term "unpaid balance of cash price" to disclose the difference between the "cash price" and the "cash downpayment", trade-in, or total downpayment but used the language "cash balance";

(c) Did not use the specific term "amount financed" to disclose and describe the amount of credit which the customer had actual use of, but used the language "cash balance"; and

(d) Did not use the specific term "total of payments" to disclose and describe the sum of the payments scheduled to repay the indebtedness, but used the language "time balance" (Stip. 10; CX 2, 3, 6).

12. Respondents were advised that their contract did not conform with the requirements of Regulation Z. Thus, respondent Saul Jakel was asked:

Q. Now, was anything told to you by anyone as to the use or in the industry as to the use of contract number 2 after the date of July 1? A. Yes.

Q. What was that? A. There was a six month grace period allowed to contractors from July 1, 1969.

Q. To do what? A.To January 1, 1970.

Q. To do what? A. To use up their old contracts, provided that they put a stamp on the contract.

Q. Did you? A. Yes I did.

Q. What was that stamp? A. The stamp showed the deferred payment price the annual percentage rate (Tr. 176).

Similarly, Mr. Jakel was visited by a representative of the Federal Trade Commission in April or May of 1970 and described the visit as follows:

A. She told me that the contracts were in violation.

Q. Of what sir, do you know? A. The terminology used in the financing portion of the contract were not as required by law.

Q. What happened next? A. I then went over this with her.

Q. How did you do this sir? A. Well she showed me the wording that was required (Tr. 145.

* * *

Q. (By Judge Hinkes) Now did she show you a written document containing those — containing that language? A. Yes.

Q. Or did she just simply tell you? A. She showed me a document, your honor.

Q. Now do you remember what the document was entitled? A. I —

Q. Or what it looked like? A. Can I have that book please?

Mr. Gelber: The witness is requesting Regulation Z.

A. She showed me this terminology here that should have been in place of the —

Judge Hinkes: Well, the witness is referring to a form marked Exhibit C in Regulation Z on page 22 which includes typical formats of disclosures under the Regulation (Tr. 147).

Mr. Jakel continued:

A. The second time she visited me she told me what the violations were. We went over them. The violations seemed very minor —

Q. To you? A. Yes. Since the essence of the law was in the contract as I had it. The important parts.

Q. What was wrong with your contract? A. Ok. On number 2 under the Heading of "Time Payment" in my contract, I used the expression "Deposit herewith" next to which I have the words "Check and Cash" with a box to be checked, you know, depending upon what the salesman received from the customer.

Q. Did she say there was anything deficient or defective about that? A. Yes.

Q. What? A. She said that should "Cash Downpayment".

Q. What else? A. Where I have on here number 3 where I have "Balance, Amount Financed," she said that the law required it to read "Unpaid Balance of Cash Price". Under item number 5 where I have "Time Balance" she said it had to read "Total Payments".

* * *

A. Well I pointed out to her that in essence I was complying with the law, that everything the law required was in here, although the phraseology

was slightly different . . . and she agreed . . . she said "I agree with you that the differences are slight but the law is specific as to what is required."

* * *

Q. Well, was anything said about the further use of your contracts by her? A. Yes.

Q. What? A. She indicated to me that I could use up my contracts.

Q. And how did she convey that to you? A. She said "Well, you can use these contracts unless you hear further from us." (Tr. 154-159).

Mr. Jakel also testified that this representative of the Federal Trade Commission visited him another time in May 1970 and again spoke to him about the improper language in the respondents' contracts that were in use (Tr. 178). Shortly thereafter Mr. Jakel received a letter from the Federal Trade Commission (RX 1) dated May 18, 1970. In it the respondents were informed:

> Although you recently printed new retail installment contracts, we still must require your immediate compliance with the above requirements. Willful and knowing failure to

> comply with Truth in Lending may result in criminal liability . . . failure to respond to the above requests within 10 days will result in formal administrative action.

Sometime during the summer of 1970, Mr. Jakel received a telephone call from a different representative of the Federal Trade Commission who also advised him that the contract in use was in violation of the Truth in Lending Act (Tr. 346). Mr. Jakel said that he would like to continue to use the contract until the stock was depleted but the Commission representative told him "I don't know who could authorize you to continue to use a contract in violation of a Federal law" (Tr. 347). Mr. Jakel was later visited by this representative and, according to Mr. Jakel, was told that the representative would go back to the office to find out if he couldn't get Mr. Jakel an extension of time to use up his contracts. Mr. Jakel admitted, however, that:

> He said that he couldn't get me any more delays on the use of the contract and that if I didn't change the contract and sign the affidavit or sign the consent order...that they were going to start proceedings against me.
>
> Q. And what was your response? A. My response was that I would change the contracts but I would not sign any affidavit.
>
> Q. And did you do so? A. No.

Q. You did not do what? A. I did not print the new contracts (Tr. 199).

13. It does not appear that the respondents took *bona fide* steps prior to July 1, 1969 to order contract forms which would satisfy the requirements of Regulation Z. Mr. Jakel was asked:

Q. Were you told by anybody including the bank that you were required under the law to make efforts to obtain new printed forms to be used prior to January 1, 1970 during the period from July 1, 1969 through December 31, 1969? Were you told by anyone? A. Not that I recall.

Q. Did you have knowledge that this was required? A. No sir.

* * *

Judge Hinkes: Mr. Jakel did you take any steps before July 1, 1969?

A. I don't remember. I don't think so, because my understanding of the law was that it wasn't necessary to have the new contracts before 1970.

* * *

Q. And you said three months before December 31, [1969] approximately, you did in

any event order new contracts for the purpose of complying? A. Yes. I mean I say that I believe that that's probably when I took the step to order it. I would have allowed myself that much time (Tr. 247Z-31-Z-37).

14. The respondents' newspaper advertisements directly or indirectly aid, promote or assist in extensions of consumer credit in connection with the sale of respondents' goods and services (Stip. 15).

15. The following is language excerpted from an advertisement placed by the respondents in the New York *Sunday News*, Passaic-Bergen edition, on December 7, 1969:

> "Easy Payments Arranged" . . . "First payment in 6 months" . . . "Beauty-Style Modernizers, Inc. 432 Central Avenue, Newark" (CX 7).

16. In placing advertisements in the New York *Sunday News*, Passaic-Bergen edition, the respondents deal and have dealt directly with the advertising department of that newspaper. Respondents do not employ any agency or intermediary. Copies of the advertising contracts covering the period beginning January 1, 1968 through January 11, 1971 are identified as Commission Exhibits 8(a), (b), (c). (Stip. 17).

17. Following the publication of the December 1969 ad in the *Sunday News*, respondents were informed by the Federal Trade Commission that the advertising in that issue was in violation of Regulation Z. Mr. Jakel was asked:

Q. And will you explain to the court what about that ad was brought to your attention by the Federal Trade Commission letter which you then acted upon? A. May I take a moment to read the letter?

Q. Of course. A. The first payment in six months was objected to.

Q. Anything else? A. I believe the easy payments arranged phrase also was objected to (Tr. 134-135; see also RX 3).

18. Advertisements appeared in the Sunday *Star Ledger* on the dates indicated below and employed the quoted language as indicated:

(a) "Aluminum Combination Windows and One Door" . . . "No Downpayment" . . . "Three years to pay" . . . "Beauty-Style Modernizers, Inc., 432 Central Avenue, Newark". This ad appeared on June 14, 21, and July 5, 1970 (CX 9(a), (b), and (c)).

19. The advertisements described in paragraph 18 above which appeared in the Sunday *Star Ledger* were prepared and placed by P & G Advertising Agency, 33 Evergreen Place, East Orange, New Jersey, for and in behalf of respondents (Stip. 20). According to respondents' clerk, Saul Jakel and P & G Advertising Agency prepared the copy for the ads jointly (Tr. 107).

Initial Decision

20. The advertisements described in paragraphs 15 and 18, appearing in the Sunday *Star Ledger* and *Sunday News* failed to state:

(a) The cash price;

(b) The number, amount and due dates or period of payments, scheduled to repay the indebtedness if the credit is extended;

(c) The amount of the finance charge expressed as an annual percentage rate; and

(d) The deferred payment price (Stip. 21).

CONTENTIONS AND CONCLUSIONS

Counsel for the respondents contend that the respondents have not violated Regulation Z in either their contracts for the sale of their goods and services or in their advertising of their goods and services.

The Contracts

In this connection three specific time periods are involved: The period prior to July 1, 1969 when the Truth in Lending Act became effective, the period beginning July 1, 1969 and ending December 31, 1969, and the period subsequent to December 31, 1969.

Initial Decision

Section 226.6(k) of Regulation Z is particularly pertinent to both the period preceding July 1, 1969 and the period between July 1, 1969 and December 31, 1969. It states:

> (k) Transition period. Any creditor who can demonstrate that he has taken bona fide steps, prior to July 1, 1969, to obtain printed forms which are necessary to comply with the requirements of this Part may, until such forms are received but in no event later than December 31, 1969, utilize existing supplies of printed forms for the purpose of complying with the disclosure requirements of this Part, other than the requirements of paragraph (b) of Section 226.9:
>
> Provided, That such forms are altered or supplemented as necessary to assure that all of the items of information the creditor is required to disclose to the customer are set forth clearly and conspicuously.

The meaning of this section is obvious. It simply permits a creditor to continue using his existing supplies of printed forms after July 1, 1969, provided he can demonstrate that he took bona fide steps *before July 1, 1969* to obtain printed forms complying with requirements of Regulation Z and provided further that such forms are amended as necessary to convey all of the information the creditor is required to disclose to the customer. There is no doubt that here respondents continued to use their existing supply of forms after July 1, 1969 and indeed

at least until February 1970. Their use of such forms, assuming that they were altered to convey the required information, was proper only if the respondents had taken bona fide steps before July 1, 1969 to obtain printed forms which did comply. This the respondents did not do. Indeed, Saul Jakel admitted that he thought it wasn't necessary to have the new contracts before 1970 and ordered new contracts around September 1969. He could not remember taking any such steps before July 1, 1969 nor could he recall any instructions to make such efforts (See Finding 13 above). Respondents' continued use of their old contract forms was therefore improper and illegal after July 1, 1969, unless, of course, such contract forms contained the disclosures required by Regulation Z. This was also true of the new contract forms adopted by the respondents in 1970.

Section 226.8(c) of Regulation Z requires the disclosure of certain specified items among which are:

> (1) The cash price of the property or service purchased, using the term "cash price."
>
> (2) The amount of the downpayment itemized, as applicable, as downpayment in money, using the term "cash downpayment," . . .
>
> (3) The difference between the amount described in subparagraphs (1) and (2) of this paragraph, using the term "unpaid balance of cash price."
>
> (4) All other charges . . .

> (5) The sum of the amount determined under subparagraphs (3) and (4) of this paragraph.
>
> (6) Any amounts required to be deducted under paragraph (e) of this Section . . .
>
> (7) The difference between the amount determined under subparagraphs (5) and (6) of this paragraph, using the term "amount financed."

Section 226.8(b)(3) of Regulation Z requires the disclosure of scheduled repayments:

> (3) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness and . . . the sum of such payments using the term, "total of payments."

It has been stipulated that respondents' contracts did not use the specific terms "cash downpayment", "unpaid balance of cash price", "amount financed" or "total of payments". Instead, respondents' contracts used other language. Respondent contends, however, that the quoted language that was not used in their forms is not required by the terms of Regulation Z and that their use of different language was sufficient to disclose all of the credit terms to the customer. Counsel for the respondents cites Section 122(a) of the Truth in Lending Act:

> (a) Regulations of the Board need not require that disclosures pursuant to this chapter be made in the order set forth in this chapter, and may permit the use of terminology different from that employed in this chapter if it conveys substantially the same meaning.

Counsel for the respondents argues that respondents' use of language differing from that quoted in Regulation Z but conveying the same meaning should therefore be considered compliance with Regulation Z. I do not agree.

A close reading of Section 122 of the Truth in Lending Act makes it clear that the Board is empowered to permit different terminology than that used in the Truth in Lending Act. The Board, however, in its issuance of Regulation Z specified exactly what language was permissible. Here, too, a close reading of 226.8 of that Regulation makes it obvious that the Board required the specific language stated therein. I note, for example, that the Board requires the disclosure of certain "terms" and encloses such "terms" in quotation marks. If the Board had intended the use of language conveying a similar meaning it would have been simple to have said so or at least to have omitted the quotation marks around the language which was to be used. Moreover, Section 226.6 of Regulation Z requires the "terminology prescribed":

> (a) Disclosure: General Rule. The disclosures required to be given by this part shall be made clearly, conspicuously, in meaningful sequence, in

> accordance with the further requirements of this Section, and at the time and in the *terminology prescribed* in applicable sections. (Emphasis supplied)

Nor can such a requirement be deemed arbitrary and unreasonable. Uniform disclosure language is less apt to be subject to varying interpretations and impressions which would lessen the intended effectiveness of the Truth in Lending Act.

The case of *Richardson v. Time Premium Co.* reported in CCH Consumer Credit Guide, Par. 99, 273 is particularly apposite. There, as here, a defendant's form statement failed to use the quoted terminology of Regulation Z at Section 226.8 and it was argued that the use of the specific terms was not mandatory. The court disagreed:

> It is, first of all, clear that the Regulations do make the use of specific terminology mandatory. 12 CFR 226.2(a) [226.6(a)] reads in part, "The disclosures required to be given by this part shall be made . . . in the terminology prescribed in applicable sections." 12 CFR 226.8 in describing what disclosure is required repeatedly uses the format "shall be disclosed: . . . using the term [with applicable term stated in quotation marks]." (Bracketed portion in original)

There, too, it was argued that Section 122 of the Truth in Lending Act contradicted any interpretation requiring the use of specific terminology. The Court held, however:

> The following language of 15 USC 1632 is cited to support that position. "Regulations of the Board [* * *] may permit the use of terminology different from that employed in this part if it conveys substantially the same meaning." We do not read this language as a limitation upon the broad power to prescribe regulations as contained in 15 USC 1604 but as a limitation upon the discretion which the Board may allow creditors, which discretion it is not required to "permit" at all.

The conclusion is inescapable that respondents' failure to use the specific terms required by Regulation Z as set forth in the Findings above violated the provisions of that Regulation and of the Truth in Lending Act.

The Advertisements

Counsel for the respondents concedes that "the ads did appear as alleged in the complaint." He defends, however, on the ground that "respondent did not cause these ads to be so placed." He cites the fact that the December 1969 ad appearing in the *News* was corrected after the Federal Trade Commission representative called its irregularities to the attention of the respondents. He goes on, however, to argue that "thereafter the ad reappeared inadvertently in format used before the change. This was obviously an inadvertent placement of the ad . . . and not through the action of respondent." The Record, however, does not support this argument.

The December 1969 ad appearing in the *News* spoke of "Easy payments arranged — First payment in 6 months". The ads which appeared in June and July 1970 in the *Star Ledger* used different language stating "No downpayment — 3 years to pay". The format was obviously not that of the old ad.

Nor can the respondents escape responsibility for the 1970 ads simply because they were placed through their advertising agency, P & G Advertising Agency. It has been stipulated that the ads were placed by that advertising agency *"for and on behalf of the respondents"*. Moreover, the testimony of respondents' clerk makes it quite clear that the copy for ads was created by both Saul Jakel and a representative from P & G. The relationship of principal and agent is, therefore, conclusively established (See *Libby-Owens-Ford Glass Co.*, 63 FTC 746, 772).

That the ads violated Regulation Z is also incontrovertible. Section 226.10(d) of that Regulation provides:

> No advertisement to aid, promote, or assist directly or indirectly any credit sale . . . shall state . . . (2) the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless it states all the following items in terminology prescribed under Section 226.8:

(i) the cash price or the amount of the loan, as applicable;

(ii) the amount of the downpayment required or that no downpayment is required, as applicable;

(iii) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(iv) the amount of the finance charge expressed as an annual percentage rate.

The advertisements itemized in the Findings above, while speaking of downpayments and the period of repayment, were deficient in one or more of the required disclosures and were, therefore, violative of Regulation Z.

THE REMEDY

Having found that the respondents have violated the Federal Trade Commission Act by failing to comply with the provisions of Regulation Z, the implementing regulation of the Truth in Lending Act, I shall order that they cease and desist from engaging in such illegal activities.

Complaint counsel have proposed an order similar to that proposed by the Commission in its complaint. In addition, complaint counsel suggest additional provisions. One would

require the furnishing of specific information to the Commission in the event the named individual respondents discontinue their present business. This additional provision appears to be appropriate and consistent with the established practice of the Commission. Complaint counsel also propose a provision in the order requiring respondents to file a compliance report within 60 days. This, however, appears superfluous as the requirement is already spelled out in Section 3.61 of the Commission's Rules of Practice, reference to which is hereby made.

Complaint counsel have also proposed an addition to the order as follows:

> It is further understood that nothing contained in this order shall be construed to imply that any past or future conduct of respondents is subject to and complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

Complaint counsel seek the inclusion of the above paragraph because of the "proclivity of the respondent Saul Jakel demonstrated during the evidentiary hearing of deliberately misconstruing the plain meaning of both oral and written communications from the Commission." I do not think such a provision in the order to be issued is necessary or appropriate. It is difficult to perceive how such a hortatory admonition could prevent misunderstanding or misconstruction on the part of a respondent. The order to be entered herein is, in the opinion of the undersigned, specific and concise and is not subject to the

implications feared by complaint counsel. Even if it were so subject, a statement to the effect that it is not to be construed as implying that the respondents have complied with the Federal Trade Commission's Regulations and Statutes, would not, in my opinion, add anything to the force and effect of the order. The omission of the proposed paragraph could not relieve the respondents from the consequences of any other wrongful acts.

ORDER

IT IS ORDERED that respondents, Beauty-Style Modernizers, Inc., a corporation, its successors and assigns, Morris Jakel, individually, and as an officer of said corporation, and Saul Jakel, individually, and as General Manager of said corporation, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with any consumer credit sale or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (P.L. 90-321, 15 U.S.C. 1601, *et. seq.*), do forthwith cease and desist from:

1. Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

2. Failing to use the term "cash downpayment" to disclose and describe the amount of the downpayment in money made in connection with the credit sale, as required by Section 226.8 (c) (2) of Regulation Z.

3. Failing to use the term "unpaid balance of cash price" to disclose and describe the difference between the cash price and the cash downpayment, trade-in or total downpayment, as required by Section 226.8(c) (3) of Regulation Z.

4. Failing to use the term "amount financed" to disclose and describe the amount of credit which the customer has the actual use of, as required by Section 226.8(c) (7) of Regulation Z.

5. Failing to use the term "total of payments" to disclose and describe the sum of the payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

6. Representing, directly or by implication in any advertisement as "advertisement" is defined in Regulation Z the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the

following items are stated in terminology prescribed under Section 226.8 of Regulation Z:

(i) The cash price;

(ii) The amount of the downpayment required or that no downpayment is required, as applicable;

(iii) The number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(iv) The amount of the finance charge expressed as an annual percentage rate; and

(v) The deferred payment price.

IT IS FURTHER ORDERED that respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

IT IS FURTHER ORDERED that each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice

shall include respondents' current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

IT IS FURTHER ORDERED that respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation of dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

s/Harry R. Hinkes
Harry R. Hinkes
Administrative Law Judge

August 31, 1973

FINAL ORDER

(Filed June 11, 1974)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford
Stephen Nye

In the Matter of

BEAUTY-STYLE MODERNIZERS, INC., a corporation, and

MORRIS JAKEL and

SAUL JAKEL, individually and as officers of said corporation.

Docket No. 8898

This matter having been heard by the Commission upon respondents' appeal from the administrative law judge's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and adopting the initial decision:

Final Order

IT IS ORDERED that respondents, Beauty-Style Modernizers, Inc., Morris Jakel and Saul Jakel shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

By the Commission, Commissioner Nye not participating.

s/ Charles A. Tobin
Charles A. Tobin
Secretary

S E A L

ISSUED: June 11, 1974

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford
Stephen Nye

In the Matter of

BEAUTY-STYLE MODERNIZERS, INC., a corporation, and

MORRIS JAKEL and

SAUL JAKEL, individually and as officers of said corporation.

Docket No. 8898

OPINION OF THE COMMISSION

By Thompson, Commissioner:

This matter is before the Commission on appeal from an initial decision of an administrative law judge in which it was found that respondents have violated the Truth-in-Lending Act (15 U.S.C. §§1601, *et seq.)* and the Federal Trade Commission Act (15 U.S.C. §45(a)) in failing to disclose certain consumer credit information in connection with their advertising and sale of various home-improvement materials, supplies and installation services. The order issued by the law judge would require respondents to disclose certain credit terms and information in accord with the specific requirements of the Truth-in-Lending Act and the Federal Reserve Board of Governors' Regulation Z implementing said Act (12 C.F.R. 266, *et seq.).*

The law judge found that respondents had failed to make the required disclosures (a) in their printed contract forms and (b) in certain newspaper advertisements placed, in part, by an advertising agency. In the former, respondents omitted the required terms "cash downpayment," "unpaid balance of cash price," "amount financed," and "total of payments," *substituting*

therefor the terms "deposit herewith," "cash balance" (twice), and "time balance." CX 1(c)(d). In certain of its newspaper advertisements, respondent Beauty-Style advertised that no downpayment was required under its credit plan but failed to disclose, as required by Regulation Z, (a) the cash price, (b) the number, amount, and due dates or periods of payments scheduled to repay the indebtedness where such credit is extended, (c) the finance charge expressed as an annual percentage rate, and (d) the deferred payment price. CX 1(j).

Respondents' major contentions on this appeal are (1) that the terms they used in their printed forms were in fact more informative than those required by the Regulation in question; (a) that the efforts they made to comply with the statute after its effective date of July 1, 1969 fully satisfied the "transition period" duties specified in the Regulation; (3) that Federal Trade Commission personnel approved the use of the printed forms found unlawful here; (4) that complaint counsel failed to prove a principal-agent relationship between Beauty-Style and the advertising agency that caused the publication of the advertisements in question; and (5) that the Federal Reserve Board exceeded the authority delegated to it by Congress in issuing the Regulation they are charged with violating (Regulation Z).

The parties agreed prior to trial that the issues to be resolved were as follows:[1]

1. "Agreed Upon Contested Issues of Fact and Law." This document appears in the exhibit binder unnumbered, but was made part of the record of the proceeding in this case by Judge Hinkes' "Order on Results of Prehearing Conference," dated April 12, 1973.

Final Order

1. Whether respondents failed to obtain new contract forms prior to, during or subsequent to the period beginning July 1, 1969 (effective date of the statute) and terminating December 31, 1969 which were in compliance with the requirements of Regulation Z.

2. Whether the retail installment contract forms as altered for the period July 1, 1969 to December 31, 1969 complied with the requirements of Regulation Z.

3. Whether respondents authorized, approved or ratified, expressly or impliedly, the publication of the various advertisements identified as Commission Exhibits 9(a), 9(b), and 9(c).

The parties also agreed upon most of the facts of the case prior to trial (CX 1(a-l)),[2] and it was essentially on an evaluation of these pretrial agreements that the law judge based his decision.[3]

2. Abbreviations:

CX — Commission Exhibit
RAB — Respondents' Appeal Brief
RX — Respondents' Exhibit
Tr. — Transcript

3. Complaint counsel rested their case upon the judge's acceptance of these two agreements (tr. 5).

Final Order

With regard to the first of the issues, the law judge noted that Section 226.6(k) of Regulation Z provided a "transition period" on the following terms:

> *Transition period.* Any creditor who can demonstrate that he has taken *bona fide steps, prior to July 1, 1969,* to obtain printed forms which are necessary to comply with the requirement of this Part may, until such forms are received but in no event later than December 31, 1969, utilize existing supplies of printed forms for the purpose of complying with the disclosure requirements of this Part, other than the requirements of paragraph (b) of §226.9: *Provided,* that such forms are altered or supplemented as necessary to assure that all of the items of information the creditor is required to disclose to the customer are set forth clearly and conspicuously. (Emphasis supplied.)

The law judge interpreted this provision as requiring that respondents undertake to *order* new conforming printed contracts *prior* to July 1, 1969, the effective date of the Truth-in-Lending Act, in order to qualify themselves for the special dispensation afforded by that "transition" language. (Tr. 247z-33, 34.)

On the second of these stipulated issues, the law judge ruled that the altered forms utilized by respondents subsequent to July 1, 1969 were not in conformance with the specific disclosure

requirements of the Act, which he held mandatory. The language of Section 226.6 permits, in his view, no deviation from the terms prescribed:

> (a) *Disclosures; general rule.* The disclosures required to be given by this Part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the *terminology prescribed* in applicable sections. . . . (Emphasis supplied.)

The law judge also ruled against respondents on the third of those three stipulated factual issues, respondents' approval or ratification of the published advertisements. Two local newspapers were used, the *Sunday News* and the *Sunday Star Ledger*. Respondents dealt with the former directly and hence could hardly deny responsibility for the ad in question.[4] While an advertising agent acted as intermediary in the placement of the two challenged ads in the second of these publications,[5] the law judge concluded that there was a principal-agent relationship involved and hence that the legal responsibility for their content rested with respondents.

Respondents' Appeal

There is little in the way of a significant dispute on the facts before us and the various legal arguments raised by respondents

4. CX 7. This ad appeared in the *News* on December 7, 1969 and contained the language "Easy Payments arranged . . . 1st Payment in 6 months."

5. CX 9(a-c). These ads appeared in the *Ledger* on June 14, June 21, and July 5, 1970 and offered: "No downpayment . . . 3 years to pay." CX 1(i), (j); CX 9(a-c).

turn largely on the quite specific and unambiguous language of the Truth-in-Lending Act and its implementing Regulation Z. The law judge was plainly correct in holding that the terms prescribed by the latter are mandatory, i.e., it is not open to a creditor to substitute terms that, in his view, are "superior" to those laid down in that Regulation.[6] In *Zale Corp., et al.*, 78 FTC 1195 (1971), for example, the respondents urged that while their disclosures were not in the specific language of the Act as implemented in Regulation Z, the phraseology used accomplished the same purpose. We disagreed: "Clearly such specificity is authorized under the broad statutory authority granted." *Ibid.*, p. 1223. See also *Richardson v. The Time Premium Co.*, CCH Consumer Credit Guide, par. 99273 at p. 89, 240 (S.D. Fla. 1971).[7]

Nor is there any dispute in this record on the point that respondents were repeatedly advised by the Commission's staff that their contract forms failed to make consumer-credit disclosures in the precise language required and therefore that the use of those forms violated the Act. (Tr. 144, 145, 154, 157,

6. Respondents raise (RAB, p. 9) the point that Section 122 of the Act (15 U.S.C. §1632) *allows* the Federal Reserve Board's Governors to promulgate, by regulation, forms of credit disclosure couched in words other than those spelled out in the statute, so long as such substitute terms convey substantially the same meaning. We need only point out, however, that the regulation which the Board *did* promulgate requires the exact language which had originally been set out in the Act. Whatever regulation the Board *might* have adopted, the one actually before us is unambiguous.

7. This view is also underscored in the Federal Reserve Board's own publication, "What You Ought to Know About Federal Reserve Regulation Z" 7 (1969), of which respondents' counsel caused the judge to take official notice (tr. 116).

178, 183, 199, 247z-11 and 12, 272, 311, 316, 346, 347; RX 1.)[8] Indeed, respondents' counsel conceded in argument before the law judge that his clients had not used the prescribed language in making the disclosures required by the Regulation in question. (Tr. 376.) His argument, rather, was to the effect that they were nonetheless in "substantial" compliance with the statute.

There is no such thing as "substantial" compliance with the Truth-in-Lending Act and the Regulation that implements it. Either you are or you aren't. The purpose of that statute is to permit the ordinary consumer, without regard to the degree of his commercial sophistication, to receive the kind of credit information that will allow him effectively to compare the credit terms being offered in the marketplace and thus to "shop" for the most favorable terms available. (15 U.S.C. §1601.) Only uniform terms, universally used, would allow the kind of credit comparison mandated by the Act. (See *Zale Corp., et al.*, 78 FTC 1195, 1223 (1971); H.R. Rep. No. 1040, 90th Cong., 1st Sess. 13 (1967).) The Act was concerned not only with the *substance* of disclosure but, for purposes of consumer comparison shopping, was concerned as well with the *form* of

8. Respondents contend that staff members of the Federal Trade Commission *approved* the use of their altered sales contract forms through 1969 (tr. 159, 195). The record itself indicates, however, only that one staff member promised to make inquiry of his superiors regarding the physical arrangement on the forms of some particular terms of credit information (tr. 313, 317). Direct testimony of two staff members as well as documentary evidence amply supports complaint counsel's argument that respondents were repeatedly informed of the non-conformance of their contracts to the requirements of the law and were never, at any time, given permission to continue use of the altered but non-conforming forms. (Tr. 274, 292, 298, 311, 316, 346, 347, 372.) In fact, one staff member testified that he informed Mr. Jakel, "[W]e can't authorize you to continue to use a contract in violation of a federal law." (Tr. 347.)

that disclosure. We agree with the administrative law judge, therefore, that respondents' contracts were in violation of the Truth-in-Lending Act and Regulation Z in the particulars set out in the stipulated facts (CX 1(c), (d)).

Nor do we find any error in the law judge's ruling on the deficiencies in respondents' newspaper advertisements. According to respondents, the allegedly illegal advertisement in the *News* (CX 7) was placed "inadvertently" (RAB, p. 11), and once respondents' attention was called to it, was withdrawn and never again appeared. With regard to the June 14, June 21 and July 5, 1970 advertisements in the *Ledger* (CX 9(a-c), respondents deny liability because the ads were placed by an advertising agency after the agency had been instructed to correct the advertisements by Beauty-Style's office clerk (tr. 94, 101, 130, 169, 170, 223, 247z-22, 43, 379).

The same general legal principles which govern the consumer credit disclosures on written contracts also govern in situations where advertising of credit terms is undertaken. As we observed in *Zale:*

> . . . The advertising provision of the Truth-in-Lending Act and Regulation Z are directly parallel to the other substantive sections which require disclosures. Wherever applicable, the same terminology mandated in the contract forms is mandated in the advertising. Given the purpose of the statute, to enhance competition among financial institutions and other firms

> extending consumer credit and to increase the informed use of credit by consumers (§102, Title I), and the structure of the regulation, the advertising provisions of the Act are clearly part and parcel of the general disclosure scheme. (78 FTC 1242.)

It is undisputed that the December 7, 1969 advertisement in the *News* and the June 14, June 21 and July 5, 1970 advertisements in the *Ledger* failed to make certain credit term disclosures (tr. 128, 134, 135, 247-z-42, 43; RX 3). Nor is it disputed that these violations were brought to the attention of the respondents, both orally and in writing, including personal visitation by Commission staff members (tr. 93, 94, 127, 134, 135, 164, 168, 169, 247z-22, 279, 308; RX 3). Respondent Jakel, who was generally in charge of Beauty-Style's advertising, conceded that he did not check the *Ledger* to determine whether the agency had, in fact, altered the suspect advertising. Nor did respondents' clerk check the *Ledger* (tr. 97, 247-z-19-22, 25). Respondents' advertising agency was stipulated to have acted "for and on behalf of the respondents" in its placing of advertising generally (CX 1(j)). Respondent Jakel and representatives of the agency were joint draftsmen of the advertising copy in question (tr. 107, 108). When the non-conforming advertisements were run, respondents became liable by virtue of their principal-agent relationship (see *Libby-Owens-Ford Glass Co.*, 63 FTC 746, 772 (1963)). We therefore agree with the administrative law judge's conclusion that all the respondents' advertisements in question violate Section 226.10(d) of Regulation Z.

The time-frame issue runs throughout this case and has to do with three crucial deadlines for respondents' compliance with the several aspects of Truth-in-Lending. The Federal Reserve Board's own pamphlet, explaining the requirements of Section 226.6(k) of Regulation Z, sets forth these basic time obligations under the Act:

> If you have taken the proper steps to get any new credit forms before July 1, 1969, and find they cannot be delivered to you by that date, then you may be able to use your existing forms. But they must show clearly the information a customer must be given under Regulation Z. You may do this by adding to or altering your forms. However, after December 31, 1969, you may no longer do this. ("What You Ought to Know About Federal Reserve Regulation Z" 4 (1969).)

It is uncontested that respondents undertook no steps to secure new contract forms until late in 1969 (tr. 247z-31-37). They were therefore in violation of the statute from the first day of its effectiveness (see *Kroll v. Cities Service Oil Company,* CCH Consumer Credit Guide, par. 99102 at 88, 794-95 (N.D. Ill. 1972)). Further, the respondents continued to be in violation of the statute throughout 1969 because the altered forms they used did not, as noted, make the required disclosures in the form prescribed by law (CX 1(c), CX 2). New printed forms were not available for use until February 1970 (CX 1(c), CX 3(a)(b)). And the precise disclosures required by the Act did not appear in them until at least July 1972 (CX 1(c)(d)).

Final Order

Finally, respondents have raised for the first time on appeal the question of the validity of the delegation to the Board of Governors of the Federal Reserve Board the power to formulate regulations administering the Act (RAB, pp. 7-11). In respondents' view, the Federal Reserve Board, in requiring the specific disclosure language set out in Regulation Z, has exceeded the congressional mandate of its delegated power as spelled out in the Act.

Section 104 of Truth-in-Lending provides:

> The Board shall prescribe regulations to carry out the purposes of this chapter. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter to prevent circumvention or evasion thereof, or to facilitate compliance therewith. (15 U.S.C. §1604.)

Congress is free to delegate legislative authority provided it has exercised "the essentials of the legislative function — of determining the basic legislative policy and formulating a rule of conduct" *(Yakus v. United States,* 311 U.S. 414, 424 (1944)). A delegation of legislative power is proper "if Congress shall lay down by legislative act an intelligible principle" to which the official or agency must conform *(Hampton v. United States,* 276 U.S. 394, 409 (1928)).

One seeking to challenge the legality of a delegation of legislative authority to an agency bears the burden of showing in the delegation such an absence of standards for agency conduct as to frustrate the ability of Congress to determine if its policy is being effectuated *(Amalgamated Meat Cutters v. Connally*, 337 F. Supp. 737, 746, 747 (D.D.C. 1971)).[9] In *Zale Corp., et al., infra*, and *Charnita, Inc., et al.*, 80 FTC 892 (1972), the Commission recognized the validity of the particular delegation of power in issue here. In *Zale*, for example, the law judge found that the Board, "in the valid exercise of its expert discretion," could "very properly require" specific phraseology it "regards as important," and "since the words (required by Regulation Z) are reasonably adopted to the enforcement of the Act and their use does not contravene some other requirement of the law, the regulation must be followed" *(ibid.)*.

Respondents' counsel advised us during oral argument that, if "every creditor must use these 'X' words and 'B' words, then we simply will fold our tents and go to whatever forum is available. . . ."[10] Believing as we do that the statute before us is of the *malum prohibitum* character and therefore leaves no room for the substituting of Y words for X words, we can only hope that respondents will strike their legal tents in an appropriately poetic spirit:

9. This case involved a challenge to the President's authority to freeze wages and prices under the Economic Stabilization Act of 1970, where the delegation of power was couched in terms of the President's power "to issue such orders and regulations as he may deem appropriate to stabilize rents, wages, and salaries." The delegation in question there was upheld (337 F. Supp. 744).

10. Transcript of Oral Argument before the Commission (March 6, 1974), p. 26.

And the night shall be filled with music,
And the cares that infest the day,
Shall fold their tents like the Arabs,
And as silently steal away.

The decision of the administrative law judge will be affirmed and adopted as the decision of the Commission.

Commissioner Nye did not participate.

June 11, 1974

JUDGMENT ORDER

(Filed April 8, 1975)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 74-1782

BEAUTY-STYLE MODERNIZERS, INC., a corporation, and MORRIS JAKEL and SAUL JAKEL, individually and as officers of said corporation,

Petitioner

v.

FEDERAL TRADE COMMISSION,

Respondent

APPEAL FROM ORDER OF THE FEDERAL TRADE COMMISSION

Submitted under 3rd Cir. Rule 12(6) April 7, 1975

Before BIGGS, VAN DUSEN and ALDISERT,
Circuit Judges

Martin Gelber, Esq.,
Newark, N.J.,
Attorney for Petitioners

Judgment Order

Calvin J. Collier,
General Counsel,
Gerald Harwood,
Assistant General Counsel,
and William A.E. Doying, Esq.,
Attorneys for Respondent

After consideration of all contentions raised by the petitioners,

It is ADJUDGED AND ORDERED that the June 11, 1974, Final Order of the Commission be and is hereby affirmed.

Costs taxed against the petitioners.

BY THE COURT:-

s/ Van Dusen
Circuit Judge

Attest:

s/ Thomas F. Quinn
Thomas F. Quinn, Clerk

Dated:
April 8, 1975

RECEIVED & FILED
APR. 8, 1975
THOMAS F. QUINN
Clerk

AMENDED JUDGMENT ORDER

(Dated April 22, 1975)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 74-1782

BEAUTY-STYLE MODERNIZERS, INC., a corporation, and MORRIS JAKEL and SAUL JAKEL, individually and as officers of said corporation,

Petitioners

v.

FEDERAL TRADE COMMISSION,

Respondent

Present:
BIGGS, VAN DUSEN and ALDISERT, Circuit Judges.

AMENDED JUDGMENT ORDER

After consideration of the MOTION FOR TECHNICAL AMENDMENT OF JUDGMENT ORDER, received April 17, 1975,

It is ORDERED that the judgment order filed April 8, 1975, is amended to read as follows:

> After consideration of all contentions raised by the petitioners,

Amended Judgment Order

It is ADJUDGED AND ORDERED that the June 11, 1974, Final Order of the Commission be and is hereby affirmed, and petitioners are commanded to obey the terms of said order.

Costs taxed against the petitioners.

BY THE COURT:-

s/ Van Dusen
Circuit Judge

Dated: April 22, 1975

ATTEST:

s/ M. Elizabeth Ferguson
Chief Deputy Clerk

Certified as a true copy and issued in lieu of a formal mandate on May 14, 1975.

Test:

THOMAS F. QUINN
Clerk, United States Court of Appeals for the Third Circuit

Costs taxed in favor of respondent as follows:

Brief . . . $112.73

COLONY PRESS

printing & photo-offset

141 SOUTH ORANGE AVENUE • NEWARK, NEW JERSEY • MARKET 2-8053

Nº 2641

Date March 13,1969

Job Number 5508

Purchase Order Number

Terms: Net 30 days

Beauty-Style Modernizers
43[illegible] Central Ave.
Newark,N.J

100	Co..tracts-4 part with wrap around corners N.J.B.S.t	$120.00 3.60	$123.60

O.K 3-17
68

74a

EXHIBIT — BILL #2641 DATED MARCH 13, 1969 FROM COLONY PRESS TO BEAUTY-STYLE MODERNIZERS

COPY BOUND VERTICAL

EXHIBIT — STATEMENT DATED APRIL 1, 1969 FROM COLONY PRESS TO BEAUTY-STYLE MODERNIZERS

April 1,1969

COLONY PRESS

361 SOUTH ORANGE AVENUE • NEWARK, NEW JERSEY • MARKET 2-8053

Beauty Style Modernizers
432 Central Ave.
Newark,N.J

Date	Ref.	Charges	Credits	Balance
Mar. 6,		$ 12.88		
" 13,		123.60		
" "		74.15		
" 25,		84.46		
		29509		

EXHIBIT — CHECK DATED APRIL 10, 1969 FROM BEAUTY-STYLE MODERNIZERS TO COLONY PRESS

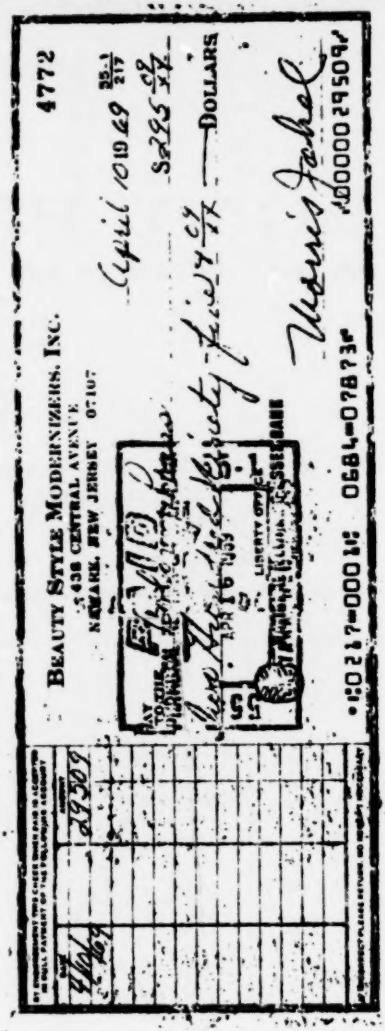
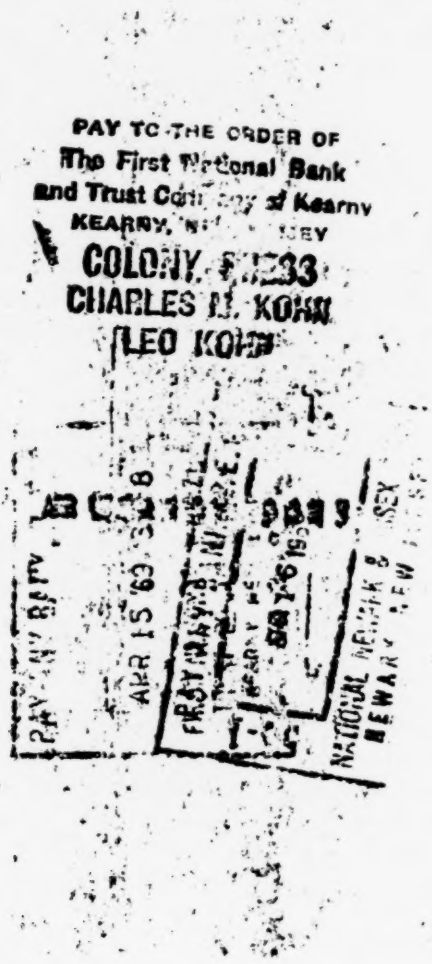


Exhibit — Check Dated April 10, 1969 from Beauty-Style Modernizers to Colony Press



FURTHER EXCERPTS OF TRANSCRIPT OF PROCEEDINGS BEFORE THE FEDERAL TRADE COMMISSION

(Commencing at page 75a, lines 7 to 13)

* * *

"Tell the court what you mean.

A. No down payment and three years to pay.

Q. Those were the words — A. Those were the words that Saul said to have them taken out of the ad.

Q. And you did so? A. That's correct."

* * *

(Commencing at page 104a, line 17)

* * *

"Q. What did you do?"

* * *

(Commencing at page 105a, line 5)

* * *

Excerpts of Transcript

"A. We weren't advertising in the Ledger at that time."

* * *

(Commencing at page 132a, line 25 to page 133a, line 1)

* * *

"A. Well, she indicated to me that she agreed that [133a] the differences were slight."

* * *

(Commencing at page 144a, lines 8 to 16)

* * *

"JUDGE HINKES: And she would do so by getting in touch with one of the newspapers or the advertising agency; is that correct?

THE WITNESS: She was told to get in touch with, number one, the New York News directly, the newspaper that we advertise in all the time.

JUDGE HINKES: All right.

Excerpts of Transcript

THE WITNESS: And number two, the Star Ledger, through the agency, which we advertise in infrequently."

* * *

(Commencing at page 196a, lines 15 to 16)

* * *

"A. Well, we ran the same ad all the time, the ad did not change from year to year actually."

* * *

(Commencing at page 204a, lines 9 to 11)

* * *

"JUDGE HINKES: My notes indicate that she testified that she was told by Mr. Jakel to delete certain things and that she called P & G and told them."

* * *

(Commencing at page 283a, line 23 to page 284a, line 14)

* * *

Excerpts of Transcript

"Q. To the best of your recollection, did you make any efforts to obtain new printed forms?

MR. GELBER: If Your Honor please
[284a] A. Yes.

MR. GELBER: All right, go ahead.

BY MR. MANOS:

Q. You did? A. Yes.

Q. Prior to January 1 of 1970? A. Yes.

Q. Will you describe those efforts? A. I went to my printer and I ordered new contracts.

Q. When did you go to your printer? A. I would say somewhere before January 1st. I don't remember the exact date.

Q. January 1st of what year? A. Of '70."

* * *

(Commencing at page 286a, lines 6 to 8)

* * *

Excerpts of Transcript

"JUDGE HINKES: I don't get involved in that right now. The witness simply answered he didn't remember taking any steps, period."

* * *

(Commencing at page 290a, lines 7 to 10)

* * *

"Q. Would you explain to the Judge that the advertisment that you use in The Daily News, is this also the same copy that you were using in other newspapers? A. Not identical."

* * *

(Commencing at page 353a, lines 11 to 19)

* * *

"Q. Tell us about that. A. The reason for my call was to find out what was happening with the affidavits and what was happening with the contracts.

And in that conversation, he told me they were going to finally — how their contracts comply with the wishes of this office and that a

galley was going to go to the printer and that when the galley was ready he would send it to me."

* * *

(Commencing at page 382a, lines 8 to 14)

* * *

"BY MR. GELBER:

Q. Now, this note which you admit making says, 'We would appreciate a copy of the new installment contract as soon as it is devised.'

Is that what it is?

I can't read your writing? A. Yes, devised."

* * *

(Commencing at page 390a, line 1 to page 391a, line 15)

* * *

"MR. ROSALES: Objection, your Honor. A. Regardless of what he thought.

MR. ROSALES: She explained herself quite clearly.

Excerpts of Transcript

JUDGE HINKES: Let the witness answer. A. Regardless of what he thought.

Q. Was it not the fact that at that time you actually agreed with him and said:

However, even though I may agree with you, or words to that effect, that the language is slight, the difference, that you have to comply? A. There was only one area in which I agreed with him. And after a discussion in the office here, I did come back to him and tell him the way we thought it could be done.

Truth in lending —

Q. I'm sorry, I wanted to stop you from continuing. I'm sorry, I apologize. Go ahead. A. Well, there were words unpaid balance of the cash — after stating cash price and down payment, there are a whole variety or words — amount financed, unpaid balance of the cash and unpaid balance.

Because there were no late charges or other additional charges in this case, all the numbers for unpaid balance of the cash price and unpaid balance and amount [391a] financed essentially with the same numbers.

He thought it was silly to keep restating all these things because they were the same numbers.

I said that they had to be restated but what I would try to do was to come back to New York here and speak to the office and find out whether all these words could not be strung together on one line instead of having to be set out on three separate lines.

Q. And did you discuss that in the office? A. Yes, we did.

Q. And when did you go back to see Mr. Jakel and tell him your decision? A. I didn't go back to tell him my decision.

Q. How did you tell him? A. It was in the letter."

* * *

(Commencing at page 479a)

* * *

". . . Indeed, Saul Jakel admitted that he thought it wasn't necessary to have the new contracts before 1970 and ordered new contracts around

September 1969. He could not remember taking any such steps before July 1, 1969 nor could he recall any instructions to make such efforts . . . . "

* * *

(Commencing at page 495a)

* * *

" . . . The purpose of that statute is to permit the ordinary consumer, without regard to degree of his commercial sophistication, to receive the kind of credit information that will allow him effectively to compare the credit terms being offered in the marketplace and thus to 'shop' for the most favorable terms available . . . . "

* * *

" . . . According to respondents, the allegedly illegal advertisement in the *News* (CX 7) was placed 'inadvertently'. . . . "

* * *

EXHIBIT — AMERICAN STANDARD CONTRACT FORM

Buyer: Marion S. Heyman Phone: 274-8049

Address: 505 East 11th Street

Town: Paterson, N.J.

Deliver To: Same Town:

Near:

Order No. 4144

Date Feb. 7, 1970

Approx.
Del. Date Soon As Possible

Provide & install on existing pivising American-Standard 5' cast iron Bildor tub, cadet toilet & ceiling (18" diameter) round basin in 24" modern vanity. Install recessed radiator (6 section). Recess water risers and steam risers. Install #2010 mini-Carey medicine cabinet with overhead light. Install 2-door sliding tub enclosure (no design on glass) sheet rock walls in tub area with water resistant sheetrock drop ceiling to level of top of window and drop further over tub area only to 6' over top of tub. Sheetrock ceiling and sheetrock all walls from floor to ceiling. Build shower wall at left-hand of tub. Clamshell trim around closet door & bathroom door. Also around window unless one

Exhibit —

side of window is finished with the decause near shower area. Install Romany-Spartan ceramic floor in the tub area only, including walls & bottom of drop ceiling. Install crystal glaze floor tile with marble door saddle. Also 5 pc. ceramic accessory set in white color. New tub waste included. Also, ceramic water tile 4' high around balance of room, except in area between bulkhead and closet.

American-Standard fixtures — color Regency Blue
Wall Tile color — Regency Blue #723
Floor Tile color — Blue Blend #kk16D
Vanity color — #2401

Should addition wastes or vents be required the additional charges will be $80.00 for each, $90. extra if a new toilet bowl is required.

PAYMENT PRICE $ 2659.92

AGREEMENT

The undersigned Buyer does hereby purchase from Beauty-Style Modernizers, Inc. and Beauty-Style Modernizers, Inc. does hereby agree to sell and, in event above contract asks for any installations, to make such installations in accordance with the above specifications, which the aforesaid Buyer hereby approves and for which the Buyer agrees to pay in accordance with the terms shown to the right of this agreement

The Buyer agrees to execute and deliver to the Contractor a promissory note in the sum of $2,659.92 (time balance) which is

Exhibit —

payable in 36 consecutive monthly installments of $117.22 each on the 1st day of each month hereafter commencing 30 days after completion of job. The buyer further agrees to sign any other appropriate instrument for the purpose of financing.

Buyer has option to pay cash immediately on completion without any finance charges as per Chapter 41, P.L. 1960.

Contractor represents that he has been DULY LICENSED BY THE COMMISSIONER OF BANKING AND INSURANCE OF NEW JERSEY. Buyer represents that no representations have been made to him to induce him to sign this contract other than those contained herein.

The Buyer represents and acknowledges that (he is) (she is) (they are) the Owner(s) of the property where installation is to be made.

The Owner represents that the above stated work may be performed by the Contractor and that the house complies with existing building regulations. The Owner further states that there are no existing violations.

In the event there are violations, the Owner agrees to immediately correct same at his own expense within a short period of time so that the Contractor may continue to perform his work.

THE CONTRACTOR HEREIN STATES THAT HE CARRIES WORKMEN'S COMPENSATION AND PUBLIC LIABILITY INSURANCE APPLICABLE TO THE WORK TO BE PERFORMED UNDER THIS CONTRACT.

Exhibit —

It is expressly agreed that this contract contains all of the terms and conditions between the Owner and Contractor, and that no verbal modifications or changes shall have any effect.

Any additional work to be performed by the Contractor shall only be done at the written request of the Homeowner at an agreed price.

It is further expressed, agreed that the agreement is not subject to cancellation. Buyer agrees to become liable to the Contractor in the event of any breach or violation of this agreement by the Buyer for a sum equal to the profits Contractor would have earned together with the reasonable value of the work and materials already furnished, expenses incurred and a reasonable attorney's fee.

NOTICE TO OWNER

DO NOT SIGN THIS CONTRACT IN BLANK. YOU ARE ENTITLED TO A COPY OF THE CONTRACT AT THE TIME YOU SIGN. KEEP IT TO PROTECT YOUR LEGAL RIGHTS.

Beauty-Style Modernizers, Inc. x Marion S. Heyman Owner

Repr., s/illegible Date: 2/7/70 Mary G. Heyman Owner

OWNER(S) HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE ABOVE CONTRACT THIS 7th DAY OF FEBRUARY, 1970
NO. 369 IM B

x Marion S. Heyman
OwnerCXID #6(c)

Exhibit —

TIME PAYMENT SALE

Cash Price	$2,240.00
Deposit Herewith	$ 240.00
☑ Check ☐ Cash	
Cash Balance	$2,000.00
Credit Ser. Chg.	$419.92
Time Balance	$2,419.92

EXHIBIT — RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT

EXHIBIT C

Seller's Name: _____ Contract #_____

_____

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT

The undersigned (herein called Purchaser, whether one or more) purchases from _____ (called) and grants to _____ a security interest in, subject to the terms and conditions hereof, the following described property.

QUANTITY	DESCRIPTION	AMOUNT	
	Sales Tax		
	Total		

Description of Trade-In

_____

_____

_____

Insurance Agreement

The purchase of insurance coverage is voluntary and not required for credit. (Type of Ins.) insurance coverage is available at a cost of $_____ for the term of credit.

I desire insurance coverage

Signed_____ Date_____

I do not desire insurance coverage

Signed_____ Date_____

PURCHASER'S NAME_____

PURCHASER'S ADDRESS_____

CITY_____ STATE_____ ZIP_____

1. CASH PRICE		$_____
2. LESS: CASH DOWN PAYMENT	$_____	
3. TRADE-IN	_____	
4. TOTAL DOWN PAYMENT	_____	$_____
5. UNPAID BALANCE OF CASH PRICE		$_____
6. OTHER CHARGES:		
_____		$_____
_____		_____
7. AMOUNT FINANCED		$_____
8. FINANCE CHARGE		$_____
9. TOTAL OF PAYMENTS		$_____
10. DEFERRED PAYMENT PRICE (1+5+6+8)		$_____
11. ANNUAL PERCENTAGE RATE		_____%

Purchaser hereby agrees to pay to _____ at their offices shown above the "TOTAL OF PAYMENTS" shown above in _____ monthly installments of $_____ (final payment to be $_____) the first installment being payable _____ 19____, and all subsequent installments on the same day of each consecutive month until paid in full. The finance charge applies from _____ (Date)

Signed_____

Notice to Buyer: You are entitled to a copy of the contract you sign. You have the right to pay in advance the unpaid balance of this contract and obtain a partial refund of the finance charge based on the "Actuarial Method." [Any other method of computation may be so identified, for example, "Rule of 78's," "Sum of the Digits," etc.]

This form, when properly completed, will show how a creditor may comply with the disclosure requirements of the provisions of paragraphs (b) and (c) of §226.8 of Regulation Z for the type of credit extended in this example. This form is intended solely for purposes of demonstration and it is not the only format which will permit a creditor to comply with disclosure requirements of Regulation Z.

Exhibit — Retail Installment Contract and Security Agreement

ILLUSTRATIONS OF FEDERAL DISCLOSURES ON A RETAIL INSTALLMENT CONTRACT
(Section 226.8)

Applicable Disclosures Shown on Exhibit C (opposite page)	**Regulation Z Reference (226.8)**
1. "Cash Price"	(c)(1)
2. "Cash Downpayment"	(c)(2)
3. "Trade-In"	(c)(2)
4. "Total Downpayment"	(c)(2)
5. "Unpaid Balance of Cash Price"	(c)(3)
6. Other Charges Individually Itemized (not finance charges)	(c)(4)
7. "Amount Financed"	(c)(7)
8. "Finance Charge"	(c)(8)(i)
9. "Deferred Payment Price"	(c)(8)(ii)
10. Date Finance Charge Begins to Accrue	(b)(1)
11. "Annual Percentage Rate"	(b)(2)
12. Number, Amount, and Due Dates of Payments	(b)(3)
13. "Total of Payments"	(b)(3)
14. Identification of Security Interest	(b)(5)
15. Identification of Property to Which Security Interest Relates	(b)(5)
16. Method of Computing Any Unearned Portion of the Finance Charge	(b)(7)
17. Identification of Creditor	(a)
18. Charges for Credit Life, Accident, Health or Loss of Income Insurance	226.4(a)(5)

Other Disclosures Not Applicable to Example Illustrated on Exhibit C

Regulation Z prescribes other disclosures to be made in connection with credit sales depending on the terms of the transaction and type of security interest taken by the creditor. For example:

	§226.8
"Prepaid Finance Charge"	(c)(6)
"Required Deposit Balance"	(c)(6)
"Balloon Payment"	(b)(3)
Default, Delinquency or Similar Charges	(b)(4)
After Acquired Property	(b)(5)
Security for Future Indebtedness	(b)(5)
Penalty Charge	(b)(6)
Unearned Finance Charge	(b)(7)
Property Insurance	226.4(a)(6)
Real Property Security	226.9

EXHIBIT — AMERICAN STANDARD CONTRACT FORM IN BLANK 94a

b.. UTY-STYLE MODERNIZERS, INC.
432 CENTRAL AVENUE
NEWARK, N. J. 07107
Phone: MArket 2-8068

AMERICAN-Standard
DEALER – CONTRACTOR
BEAUTY-STYLE BATHROOMS

Buyer _____ Phone: _____

Address: _____

Town: _____

Deliver to _____ Town: _____

Near: _____

Order No. _____

Date _____

Approx. Del. Date _____

AGREEMENT

The undersigned Buyer does hereby purchase from Beauty-Style Modernizers, Inc. and Beauty-Style Modernizers, Inc. does hereby agree to sell and, in event above contract calls for any installations, to make such installations in accordance with the above specifications, which the aforesaid Buyer hereby approves and for which the Buyer agrees to pay in accordance with the terms shown to the right of this agreement.

The Buyer agrees to execute and deliver to the Contractor a promissory note in the sum of $ _____ (time balance) which is payable in _____ consecutive monthly installments of $ _____ each on the _____ day of each month hereafter commencing _____ days after completion of job.

CONTRACTOR shall not be liable for delay due to causes beyond the control of the Contractor.

OWNER agrees to pay a delinquency and collection charge on each installment in default for a period of ten days or more in an amount equal to 5% of such installment or Five Dollars, whichever is less.

OWNER agrees to execute a note and application for credit together with a mortgage (if required by the Contractor) on property described as _____ (address) which is additionally described in a mortgage separately signed for securing the payment of aforesaid total of payments, in a form satisfactory to the contractor, and any other appropriate instrument for the purpose of financing.

OWNER has the right to pay in advance the unpaid balance of this contract and obtain a partial refund of the finance charge based on the Rule of 78's, after first having reduced the original finance charge by an acquisition cost of $15.00.

Buyer has option to pay cash immediately on completion without any finance charges as per Chapter 41, P.L. 1960.

TIME PAYMENT SALE

1. CASH PRICE . . . . . $ _____
2. Deposit ☐ Check ☐ Cash Herewith . . . . . $ _____
3. Cash Balance (AMOUNT FINANCED) (1-2) $ _____
4. FINANCE CHARGE . . . . . $ _____
   (Charges accrue from date of purchase by Home Financing Agency)
5. Time Balance . . . . . (3+4) $ _____
6. DEFERRED PAYMENT PRICE . (1+4) $ _____

ANNUAL PERCENTAGE RATE _____ % _____

Contractor represents that he has been DULY LICENSED BY THE COMMISSIONER OF BANKING AND INSURANCE OF NEW JERSEY. Buyer represents that no representations have been made to him to sign this contract other than those contained herein.

The Buyer represents and acknowledges that (he is) (she is) (they are) the Owner(s) of the property where installation is to be made.

The Owner represents that the above stated work may be performed by the Contractor and that the house complies with existing building regulations. The Owner further states that there are no existing violations.

In the event there are violations, the Owner agrees to immediately correct same at his own expense within a short period of time so that Contractor may continue to perform his work.

THE CONTRACTOR HEREIN STATES THAT HE CARRIES WORKMEN'S COMPENSATION AND PUBLIC LIABILITY INSURANCE APPLICABLE TO THE WORK TO BE PERFORMED UNDER THE CONTRACT.

It is expressly agreed that this contract contains all of the terms and conditions between the Owner and Contractor, and that no verbal modification or changes shall have any effect.

Any additional work to be performed by the Contractor shall only be done at the written request of the Homeowner at an agreed price.

Buyer agrees to become liable to the Contractor in the event of any breach or violation of this agreement by the Buyer for a sum equal to the profits Contractor would have earned together with the reasonable value of the work and materials already furnished, expenses incurred and a reasonable attorney's fee.

NOTICE TO OWNER

DO NOT SIGN THIS CONTRACT IN BLANK. YOU ARE ENTITLED TO A COPY OF THE CONTRACT AT THE TIME YOU SIGN. KEEP IT TO PROTECT YOUR LEGAL RIGHTS.

Beauty-Style Modernizers, Inc. _____ Owner

Authorized Repr.: _____ _____ Owner

OWNER(S) HEREBY ACKNOWLEDGE(S) RECEIPT OF A COPY OF THE ABOVE CONTRACT THIS _____ DAY OF _____, 19 ___

NO. 170 1MF

_____ Owner

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-24

BEAUTY-STYLE MODERNIZERS, INC., AND MORRIS JAKEL, PETITIONERS

v.

FEDERAL TRADE COMMISSION

No. 75-25

SAUL JAKEL, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

Petitioners are engaged in the sale of home improvement materials, supplies, and installation services. The Federal Trade Commission found that they violated provisions of the Truth-in-Lending Act, as amended, 15 U.S.C. 1601, *et seq.*, and the Federal Trade Commission Act, as amended, 15 U.S.C. 45(a), by failing properly to disclose in their printed contract forms and newspaper advertisements certain credit terms and information as required by the Truth-in-Lending Act and the Federal Reserve Board's Regulation Z (12 C.F.R. Part 226).

The Commission ordered petitioners to cease and desist from such violations, to furnish a copy of the cease and desist order to all present and future personnel engaged in advertising or extending consumer credit, and to notify the Commission if either of the individual petitioners becomes affiliated with a different business or if the corporate petitioner undergoes any change that may affect compliance obligations (Pet. App. 51a-54a). The court of appeals affirmed without opinion and directed petitioners to comply with the Commission's order (*id.* at 72a-73a).

Petitioner Saul Jakel (No. 75-25) contends that the Commission's decision is contrary to the weight of the evidence (Pet. 8-35). The Commission's findings and conclusions, however, are fully supported by substantial evidence, as summarized in the initial decision of the administrative law judge (Pet. App. 29a-41a) and in the opinion of the Commission (*id.* at 57a-66a).

Petitioners Morris Jakel and Beauty-Style Modernizers, Inc. (No. 75-24) argue that the Commission departed from the issues defined by a stipulation (Pet. 17-20). They claim that the stipulation (Pet. App. 14a-15a) foreclosed any inquiry by the Commission into their practices subsequent to December 31, 1969. The first stipulated issue, however, was whether petitioners "failed to obtain new contract forms prior to, during *or subsequent to* the [regulatory transition] period beginning July 1, 1969 and terminating December 31, 1969" (*id.* at 14a; emphasis added). See 12 C.F.R. 226.6(k) (1974 rev.).

Finally, all three petitioners contend that the Commission's remedial order is too broad and punitive. They claim that the cease and desist provisions are unnecessary because petitioners have already ceased their violations, and that the provisions requiring them to give copies of the

order to present and future employees[1] and to notify the Commission of any change in their business are punitive and unrelated to the Commission's regulatory responsibilities.

The standard cease and desist provisions, however, are reasonably designed to ensure that petitioners will not repeat their violations. Requiring that each employee be made aware of the Commission's order, and that petitioners notify the Commission of any changes in their business affiliations, reasonably facilitates efforts to ensure compliance with the cease and desist provisions. The order is remedial, not punitive.

It is therefore respectfully submitted that the petitions for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

ROBERT J. LEWIS,
General Counsel,
Federal Trade Commission.

AUGUST 1975.

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[1]Petitioners suggest that the order is ambiguous because it might be understood to require that they give copies of it to non-employees. If petitioners entertain serious doubt concerning the proper interpretation of the Commission's order, they may obtain the advice of the Commission pursuant to 16 C.F.R. 3.61(d), which provides that "[a]ny respondent subject to a Commission order may request advice from the Commission as to whether a proposed course of action, if pursued by it, will constitute compliance with such order."